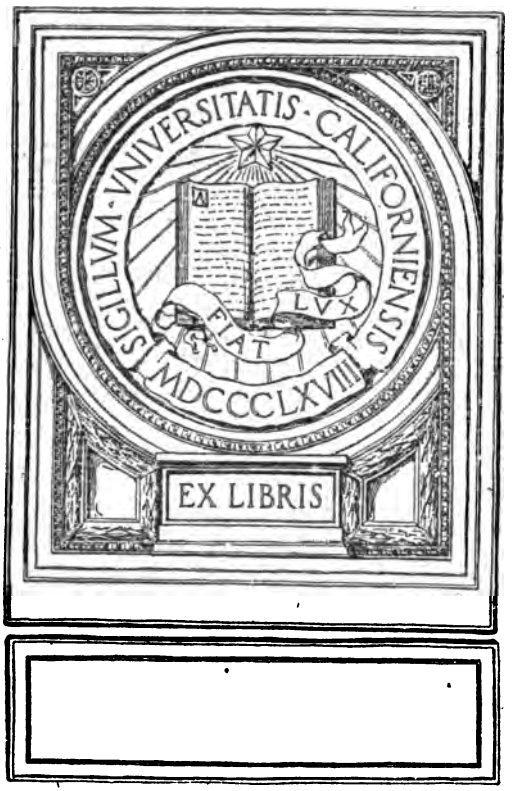

INTERNATIONAL ARBITRATION

AMONGST THE GREEKS

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AMONGST THE GREEKS

BY

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PREFACE

For many years past there has been a pressing need for a fresh treatment of the subject of international arbitration among the ancient Greeks. M. H. E. Meier dealt with it in his essay on *Die Privatschiedsrichter . . . Athens sowie die Austrägalgerichte in den griechischen Staaten des Altertums* (Halle, 1846), and R. Egger has some remarks on the question in the second edition of his *Études historiques sur les traités publics chez les Grecs et chez les Romains* (Paris, 1866). A new era was marked by the full and careful study of E. Sonne entitled *De arbitris externis, quos Graeci adhibuerunt ad lites et intestinas et peregrinas componendas, quaestiones epigraphicae* (Göttingen, 1888), which covers the whole field indicated by the title and is not confined to the subject of international arbitration; but Sonne's task was mainly that of collecting, discussing, and classifying the relevant inscriptions and passages from ancient authors, and he has devoted only twelve pages to the discussion of our subject in general. Six years later V. Bérard's monograph *De arbitrio inter liberas Graecorum civitates* (Paris, 1894) appeared, a work which, though it gives a somewhat fuller account of the procedure and the history of arbitration among the

Greek states, is in many respects unworthy of the eminent French scholar and writer whose name it bears.

These two dissertations were still regarded as the standard authorities when I wrote the essay which follows, and no fresh treatise upon the subject had appeared, so far as I am aware, within the past eighteen years, in spite of the remarkable interest recently aroused in the question of arbitration. A popular but stimulating account of the Greek employment of this means of avoiding an appeal to arms was contributed in 1904 by J. Gennadios to the pages of a journal entitled *Broad Views*, and an interesting article dealing with the same subject appeared six years ago in the *Classical Journal* from the pen of W. L. Westermann, while C. Phillipson has devoted a chapter to it in his recent work on *The International Law and Custom of Ancient Greece and Rome* (London, 1911), which, characterized though it is by great industry and legal knowledge, has failed to utilize the new evidence upon international arbitration which has accumulated since Bérard's work was written.

My manuscript was already in the hands of the Delegates of the University Press when A. Raeder's treatise *L'Arbitrage international chez les Hellènes* (Christiania, 1912) appeared under the auspices of the Norwegian Nobel Institute, giving what is by far the fullest and best account extant of the employment of arbitration in ancient Greece. My first thought was to withdraw my own essay, but the

Delegates determined to proceed with its publication and I deferred to their decision. I have not attempted to treat all the questions involved with the minuteness which marks Raeder's work. He has discussed with great care and in considerable detail the circumstances of every known example of arbitration between state and state, and has traced the historical process which I have merely summed up in a brief sketch (Chap. VI). Yet I am not without hope that my essay may succeed in meeting a real need. To some the greater familiarity of its language, to others its brevity, may be a recommendation, while others again may see its justification in the number of inscriptions used as the basis of my study which previous writers have left unnoticed. In any case, since this essay represents an inquiry conducted quite independently of Raeder's work, it may at least serve the useful purpose of confirming his results where we agree and of calling attention to the problems where we arrive at different conclusions. Raeder has not furnished me with any new evidence, and if I have omitted some of the inscriptions which he cites, it is because I had previously come to the conclusion that they were not really relevant.

My aim is to give as accurate and complete a view as I can of the evidence, especially that which comes from inscriptions, relating to the occasions and methods of arbitration among the Greek states. Although I have consulted the modern works already mentioned and owe to them no inconsider-

able debt, my object throughout has been to divest myself as far as possible of all preconceptions and bias, and to go directly to the ancient authorities for my material.

I have retained the term 'international' in connexion with arbitration in Greece as being more familiar than 'interstatal', and as unlikely to give a false impression; for in using the word we instinctively think of it as referring to a nation in its political rather than in its ethnological sense, as denoting a state rather than a race.

I have not thought it needful to reproduce in full, as Bérard does, the inscriptions which form a large proportion of the evidence at our disposal in dealing with this subject. On the other hand, an enumeration of the texts in question has seemed to me to be essential if the foot-notes are to be kept within a moderate compass.

This essay was awarded the Conington prize in 1912; my sincere thanks are due to the Delegates of the University Press for undertaking the burden of its publication.

M. N. T.

OXFORD,
February 7, 1913.

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LIST OF ABBREVIATIONS

A. E. M.	*Archäologisch-epigraphische Mitteilungen aus Oesterreich-Ungarn.*
A. J. Arch.	*American Journal of Archaeology.*
Ἀρχ. Ἐφ.	Ἀρχαιολογικὴ Ἐφημερίς.
Ath. Mitt.	*Athenische Mitteilungen.*
B. C. H.	*Bulletin de Correspondance Hellénique.*
Bérard, *Arb.*	V. Bérard, *De arbitrio inter liberas Graecorum civitates*, Paris, 1894.
Berl. Phil. Woch.	*Berliner Philologische Wochenschrift.*
B. S. A.	*Annual of the British School at Athens.*
C. I. G.	*Corpus Inscriptionum Graecarum.*
C. I. L.	*Corpus Inscriptionum Latinarum.*
Delphes	*Fouilles de Delphes.* Tome iii, *Épigraphie.*
Ditt. *O. G. I.*	G. Dittenberger, *Orientis Graeci Inscriptiones Selectae*, Leipzig, 1903–5.
Ditt. *Syll.*²	G. Dittenberger, *Sylloge Inscriptionum Graecarum* (2nd ed.), Leipzig, 1898–1901.
Ἐφ. Ἀρχ.	Ἐφημερὶς Ἀρχαιολογική.
H. H.	E. L. Hicks and G. F. Hill, *Manual of Greek Hist. Inscriptions*, Oxford, 1901.
Hicks	E. L. Hicks, *Manual of Greek Historical Inscriptions*, Oxford, 1882.
Hitzig, *Staatsverträge*	H. F. Hitzig, *Altgriechische Staatsverträge über Rechtshilfe*, Zürich, 1907.
I. G.	*Inscriptiones Graecae.*
I. G. Brit. Mus.	*Ancient Greek Inscriptions in the British Museum.*
I. G. Rom.	*Inscriptiones Graecae ad res Romanas pertinentes.*
Inscr. Jur.	*Recueil des Inscriptions Juridiques Grecques* Paris, 1891–1904.
I. v. Magnesia	*Die Inschriften von Magnesia am Maeander.* O. Kern. Berlin, 1900.

I. v. Pergamon	*Inschriften von Pergamon.* M. Fränkel. Berlin, 1895.
I. v. Priene	*Inschriften von Priene.* F. Hiller von Gaertringen. Berlin, 1906.
Jahreshefte	*Jahreshefte des österreichischen archäologischen Institutes.*
J. H. S.	*Journal of Hellenic Studies.*
Le Bas-Foucart	Ph. Le Bas, *Voyage Archéologique: Inscriptions I, II, explication par P. Foucart.*
Le Bas-Waddington	Ph. Le Bas et W. H. Waddington, *Voyage Archéologique: Inscriptions III.*
Michel	C. Michel, *Recueil d'Inscriptions Grecques,* Paris, 1900 ff.
Mon. Ant.	*Monumenti Antichi.*
Mus. Ital.	*Museo Italiano.*
Neue Jahrb.	Fleckeisen's *Jahrbücher für classische Philologie.*
Olympia	*Olympia. V. Die Inschriften.* W. Dittenberger und K. Purgold. Berlin, 1896.
Pauly-Wissowa	Pauly-Wissowa, *Real-Encyclopädie der classischen Altertumswissenschaft.*
Raeder, *Arb.*	A. Raeder, *L'Arbitrage international chez les Hellènes,* Christiania, 1912.
R. E. G.	*Revue des Études Grecques.*
Rev. Et. Anc.	*Revue des Études Anciennes.*
Rev. Philol.	*Revue de Philologie.*
Rhein. Mus.	*Rheinisches Museum.*
SC.	*Senatus consultum.*
S. G. D. I.	*Sammlung der griechischen Dialekt-Inschriften.*
Sonne, *Arb.*	E. Sonne, *De arbitris externis . . . quaestiones epigraphicae,* Göttingen, 1888.
Stzb. Berl.	*Sitzungsberichte der K. preussischen Akademie der Wissenschaften.*
Stzb. Wien	*Sitzungsberichte der Kais. Akademie der Wissenschaften in Wien. Philosophisch-Historische Klasse.*
Ztschr. f. Num.	*Zeitschrift für Numismatik.*

I

THE SOURCES

Our knowledge of the life and thought of the ancient Greeks is derived from many different sources. Amongst these the first and most important, that to which attention has been chiefly directed throughout all the centuries during which Greek history has been studied at all, is the ancient literature, primarily that of the Greeks themselves but also, though to a much smaller extent, that of the Romans. It is only within comparatively recent times that scholars have learned that this, though the main, is not the sole avenue of approach to an adequate conception of Greek history, and that though the literary evidence is not, and never can be, relegated to a secondary position, yet our knowledge, if it is to be both full and clear, must be supplemented from other quarters. Geography and geology, philology and anthropology, numismatics, epigraphy and archaeology—each of these sciences has its distinctive contribution to make to the sum-total of that knowledge, and the last quarter of a century has witnessed the emergence of a new class of evidence in the papyri.

But although the conception of ancient Greece which we form to-day is thus derived from various sources, the relative value of these differs widely according to the particular aspect of Greek activity

which we select for study. An examination of Greek art and architecture, for example, must be based primarily upon the evidence of the ancient works in stone, metal, clay, or other material which have survived the ravages of time and man. On the other hand, our knowledge of the remarkably vigorous and diversified life of the gilds and societies which flourished throughout the Greek world from the end of the fourth or the beginning of the third century B.C. and onwards depends entirely upon the data afforded by inscriptions, supplemented, in the case of Egypt, by those of the papyri. It is in vain that we turn either to the pages of literature or to the records of archaeology; both alike have practically nothing to tell us.[1]

If now we examine the ancient evidence for the practice of international arbitration, we shall find that it comes from two sources only, literature and inscriptions. The papyri give us no assistance in this study, for, apart from those which are literary in character, they ordinarily refer to private interests or to the internal administration of Ptolemaic or Roman Egypt and do not deal with questions of foreign policy and international relations. Again, though archaeology and numismatics have thrown much valuable light upon questions of national affinities, of commerce and intercommunication and even, in some instances, of friendships and alliances between state and state, yet they cannot distinguish those cases in which the *rapprochement* is the outcome of an arbitral settlement of previous differences, still less

[1] See the Index of sources in F. Poland, *Geschichte des griech. Vereinswesens*, pp. 548 ff.

can they determine the process by which such settlement was brought about.

It would be a difficult task, and fortunately it is not necessary, to decide whether in our present study the literary or the epigraphical evidence is the more valuable. Each supplements the other and each has its own characteristics. Were it not for the literary sources, our evidence would be restricted to the fourth and following centuries, for the earliest inscription to which we can appeal belongs to about 390 B.C.[1] Further, the examples of arbitral judgements recorded in the extant works of the Greek and Roman historians are, as a rule, placed in their true historical setting and are, moreover, selected because of their intrinsic importance. In both these respects the epigraphical evidence contrasts in a marked way with that afforded by the historians. The former gives us, for the most part, individual passages, as it were, of Greek history, torn from their context and impossible fully to understand because isolated from that setting which alone renders the incidents of history really intelligible. Nor has their survival been determined by the inherent importance of the events which they relate but by a number of factors wholly irrelevant to their historical content. Indeed, many of the arbitral decisions so recorded must have been of infinitesimal importance when regarded from the standpoint of Greek history as a whole, and a number of them can be only approximately dated by the character of the letters in which they are engraved. In others, again, the mutilated condition of the stones makes it impossible to determine points

[1] No. LXX. See p. 47.

which are of paramount importance historically, such as the name of one, or even of both, of the states involved in the dispute.

So far, the advantage would seem to be all on the side of the literary records. Yet the epigraphical evidence has certain compensating points of superiority. It is precise and detailed to an extent rarely, if ever, equalled by literary histories, and it furnishes information not only regarding the cause, the fact and the result of arbitration, but also regarding its process and methods, about which the historians are almost entirely silent. A comparison, however cursory, of the two classes of sources will afford abundant confirmation of this statement, but perhaps it may best be illustrated by comparing the records of literary history and of epigraphy in the single case in which we possess evidence of both kinds relating to the same arbitration. Tacitus tells how Lacedaemonian and Messenian envoys came to Rome in A.D. 25 to urge before the Senate the claims of their respective states to the ager Dentheliates and the temple of Artemis Limnatis which lay within it.[1] The Messenians asserted that awards in their favour had been pronounced by Philip of Macedon, Antigonus and Mummius, and then added

sic Milesios permisso publice arbitrio . . . decrevisse.

Such is Tacitus' account, and from it we may turn to that of the Milesians themselves as engraved at Olympia by the triumphant Messenians.[2] From it we learn how the decision was referred to Miletus, what was the precise question which the court was

[1] *Ann.* iv. 43. [2] No. 1. See p. 7.

empowered to settle, the size of the tribunal and the method of its appointment, the time-limit set to the advocates' speeches, the names of the speakers, the award, and even the exact number of votes given on either side. This is not an extreme case, but would probably be found to be typical if we possessed parallel accounts, literary and epigraphical, of other cases referred to arbitration.

Thus we are almost wholly dependent upon inscriptions for the details, above all for the details relative to the procedure, of arbitral trials. Yet it must not be thought that this statement implies any censure of the literary historians. In the instance just cited, Tacitus has placed on record those facts which, for the historian, are of paramount importance —the question in dispute, the state to which it was referred for decision, and the nature of its award. Had he inserted in his narrative a translation of the inscription engraved at Olympia, it would have been deservedly criticized as an unnecessary insertion, destroying the balance and proportion of his historical record. As well might we blame a historian of the seventeenth century for failing to quote in full all the texts contained in Gardiner's *Constitutional Documents of the Puritan Revolution* as demand from an ancient historian an account of the methods of arbitral procedure and the formulae of arbitral awards. The historian's task is to summarize, to extract the essential facts of importance from a mass of details, to set events in a true historical perspective; yet, just as a detailed knowledge of a period is impossible without the study of the contemporary documents, so any inquiry into the

processes of arbitration in the Greek world must go behind the summaries of Thucydides or Polybius, Tacitus or Plutarch, to the full and precise data of the inscriptions.

So far as the literary evidence is concerned, we are not much in advance of scholars of a century ago. Recently discovered works of ancient authors have not enlarged it, nor has textual criticism brought about any serious modification in it. The value of the epigraphical evidence, on the other hand, has increased strikingly within the last quarter of a century and even within the past few years. Not only have fresh inscriptions been unearthed, some of them of the greatest value, but the labours of Dittenberger, Foucart, Wilhelm, and others have resulted in the restoration of many passages which have survived only in a mutilated condition, and in the better understanding of the events and processes referred to in the texts. It is therefore of the greatest importance that our study of this part of the evidence should be directed to the most recent and best texts of the documents in question. The following list contains a brief account of the inscriptions which, together with a number of passages in Greek and Roman authors, form the basis of the present essay; they follow roughly a geographical order, since a chronological arrangement often results in the separation of the different episodes in a single, long-continued dispute, and in any case numerous texts can only be approximately dated.[1]

[1] I have made no attempt to supply a complete bibliography of the inscriptions contained in this list. References are given to *I. G.*, Ditt. *Syll.*[2], Ditt. *O. G. I.*, *S. G. D. I.*, and Michel in

THE PELOPONNESE

I

Sparta and Messenia

Ditt. *Syll.*[3] 314; Michel 31. [*Olympia* v. 52; Hicks 200.]
Inscribed on the base of the Nike of Paeonius dedicated at Olympia by the Messenians, probably about 423 B.C.
Date: between 146 and 137 B.C.

The heading runs: Κρίσις περὶ χώρας | Μεσσανίοις καὶ Λακεδαιμονίο[ις], and is followed by:

1. An Elean decree permitting the Messenians to inscribe the award at Olympia (ll. 3–28);
2. A letter from the Milesian magistrates to those of Elis accompanying the copy of the award (ll. 29–40);
3. The Milesian official account of the date, circumstances, conduct and result of the trial (ll. 41–70).

II

Sparta and Megalopolis

Ditt. *Syll.*[3] 304. [*Olympia* v. 47.]
Ten fragments of a marble slab excavated at Olympia.
Date: soon after 164 B.C.

A long, but unfortunately much mutilated, record of an arbitral decision between the Spartans and the Achaeans, involving the question of a disputed frontier between Sparta and Megalopolis and of the

every case where a text appears in any or all of these collections, and to them the reader is referred for a fuller bibliography. I have, as a rule, added references only to discussions of the texts which have appeared since the publication of these works, though occasionally I have indicated, in square brackets, the book or article in which the best and fullest commentary on the inscription is to be found, or that which may be most accessible to English readers.

possession of the Sciritis and Aegytis. It contains the record of a previous award (ll. 30–38), which is confirmed by the present tribunal after a vain attempt to settle the matter by agreement.

III

ZARAX AND A NEIGHBOUR-STATE

S. G. D. I. 4547, 4546.[1]

Two fragmentary slabs of red Laconian marble, found at the village of Φοινίκι, west of Epidaurus Limera.

Date: 195–146 B. C.

Decree of a Laconian city, perhaps Cotyrta,[2] in honour of two citizens, who, in an important arbitration before Tenian δικασταί, secured a verdict favourable to their state and adverse to Zarax.

IV

GERONTHRAE AND ANOTHER STATE

S. G. D. I. 4530.

On front and back of a stone slab, found at Geronthrae; of the inscription on the front of the stone but little is legible.

Date: 195–146 B. C.[3]

Decree of Geronthrae granting the honours and privileges of πρόξενοι καὶ εὐεργέται τᾶς πόλιος to Euboean judges, who, having been sent to Geronthrae to settle internal disputes, acquitted themselves to the general satisfaction and were asked to represent the state before the κοινὸν τῶν Λακεδαιμονίων in an arbitration case. Such is Bérard's[4]

[1] Professor Wilhelm has pointed out to me that these two inscriptions probably form parts of one and the same decree.

[2] Sonne, *Arb.* xxxiii; Raeder, *Arb.* p. 105, suggests that it was Asopus.

[3] So Sonne and Bérard: Raeder, *Arb.* 139, advocates a date early in the first century B. C.

[4] Bérard, *Arb.* iv. p. 11 f.; cf. Raeder, *Arb.* 138 f.

explanation, but the text, especially on the front of the stone, is so mutilated that the results are uncertain.

V

Messenia and Phigalia

Ditt. *Syll.*[3] 234; *S. G. D. I.* 4645; Michel 187; Hitzig, *Staatsverträge*, No. 18, p. 15.

On a limestone slab, broken on the left and below, found at Phigalia.

Date: 250–222 B. C.

A copy, inscribed at Phigalia, of a decree of the Messenians embodying an agreement (ὁμολογία) made with the Phigalians on the request of envoys of the Aetolian League (to which Phigalia at this time belonged) and of the Phigalians themselves, who ratified the compact (ll. 21, 22). Each state granted to the other ἰσοπολιτεία and ἐπιγαμία, and it was agreed that the disputed territory should be cultivated by citizens of both in common, as heretofore. Strictly speaking, we have here an example of mediation rather than of arbitration, for the Aetolian envoys and mediators (πρεσβενταὶ καὶ διαλυταί) do not seem to have acted as an arbitral court.

VI

Messenia and Phigalia

S. G. D. I. 4647.

Two adjoining fragments of a stele, found at Messene, south-west of the Theatre.

Date: third century B. C.

Fragment of a boundary delimitation between Messenia and Phigalia, apparently belonging to the same period and circumstances as the foregoing.

VII

MESSENIA AND PHIGALIA

S. G. D. I. 4646.

A marble fragment, found near the Stadium at Messene.

Date: third century B. C.

A fragment apparently containing portions of three paragraphs of a boundary delimitation; it refers to Messenians and Phigalians, and may relate to the same arbitration as Nos. V and VI.

VIII

MEGALOPOLIS AND THURIA: MEGALOPOLIS AND MESSENE

Olympia v. 46.

Six fragments of a large slab of grey Peloponnesian marble, inscribed on front and back; found at Olympia, 1878–1881.

Date: soon after 182 B. C.

Record of a boundary delimitation between Megalopolis and

1. Thuria (ll. 1–40),
2. Messene (ll. 41–82),

carried out shortly after the readmission of the Messenians into the Achaean League, which followed Philopoemen's death and the victory of Lycortas in 182 B. C., and the separation of Thuria from Messene, which took place at the same time.[1] It is uncertain whether the boundaries were settled by arbitration in the strict sense of the word.[2] Amongst the representatives appointed by Megalopolis to watch the commission in the interests of their state are

[1] Polyb. xxiii. 17. 2.

[2] 'Bei dem damaligen Verhältnis zwischen Messene und dem achäischen Bunde ist an ein Schiedsgericht schwerlich zu denken' (Dittenberger in *Olympia* v. p. 90). But this objection is not conclusive.

Diophanes son of Diaeus, the opponent of Philopoemen and Lycortas, Thearidas and the historian Polybius.

According to Boeckh, *C. I. G.* 1534, found at Karytena, contains an arbitral award. 'Videtur hoc titulo decretum arbitrorum contineri, in quos compromiserant litigantes.' With a boundary delimitation it certainly deals, but there is no conclusive evidence that the settlement was the outcome of an arbitration; Wilamowitz thought that the frontiers in question were those between public and private lands.[1]

IX

Tegea and Caphyae

Olympia v. 50.

Two fragments of a limestone slab inscribed on both sides; found at Olympia.

Date: second century B. C.

The record, which is very fragmentary, seems to refer to ἃ τοῦ δικαστηρίου κρίσις: there is nothing, however, to indicate the state which appointed the tribunal. As Dittenberger points out (*Olympia*, loc. cit.), the dispute cannot have related to a contested frontier, since the territories of the two states are nowhere contiguous.

X

Heraea and Aliphera

Olympia v. 48.

Fragment of a slab of greyish limestone, found at Olympia in 1884.

Date: second century B. C.

The document is too mutilated to admit of restoration, but a reference to δικασταί makes it probable

[1] Sonne, *Arb.* p. 24; Raeder, *Arb.* 141 f.

that it relates to an arbitration between the two contiguous Arcadian states mentioned in it.

XI

Arcadia and Olympia

I. G. iv. 616. [M. Fränkel, *Stzb. Berl.*, 1898, 635 ff.]
A limestone slab, now in the Museum at Argos.
Date: 362 B. C. or shortly afterwards.

If we accept Fränkel's interpretation of the inscription, we have here a list of *καταδίκαι κα[ὶ ὁμολογίαι]*, assessments made by the arbitral court representing Cleonae, or by mutual agreement between the Olympians on the one hand and the Arcadians and Stymphalians on the other, of reparation due for damage done at Olympia while in the hands of the Arcadians (365–363 B.C.).

XII

Hermione and Epidaurus

I. G. iv. 927; cf. A. Wilhelm, *Neue Beiträge zur griech. Inschriftenkunde* I (*Stzb. Wien*, clxvi. 1), pp. 26 ff.
Four fragments of a limestone slab, found at the Epidaurian Asclepieum.
Date: second century B. C.

The record is seriously mutilated, but apparently contained the names of the representatives of the contending states and the award of the arbitral court. Fränkel (*I. G.*, loc. cit.) thought that the rival of Hermione was Cleonae, and that the *κοινή* in which the verdict is expressed pointed to the Athenians as arbitrators. Wilhelm, however, has acutely shown that the disputants must be Hermione and Epidaurus, and that the arbitral court may well have been summoned from Cleonae (A l. 5).

XIII

TROEZEN AND HERMIONE

I. G. iv. 752 (see *addenda*, p. 381). To the articles there cited must be added the following: P. Legrand, *Rev. Philol.* xxvi. 99 ff.; B. Keil, *Anonymus Argentinensis*, 277; A. Nikitsky, *Journal des Ministeriums der Volksaufklärung* (in Russian), 1902, pp. 445 ff.; A. Nikitsky, *Hermes*, xxxviii. 406 ff.; A. Wilhelm, *Neue Beiträge zur griech. Inschriftenkunde* I (*Stzb. Wien*, clxvi. 1), p. 28 f.; Hitzig, *Staatsverträge*, p. 38 note 2.

A stele, broken at the top, found at Troezen in 1896.

Date: about the beginning of the second century B. C.

Part of an agreement concluded between Troezen and a neighbour-state, in all probability Hermione,[1] settling disputes relating to territory and fishing rights, adjusting claims made for compensation, and granting to citizens of either state the rights of marriage and of possessing real property in the other in perpetuity. The Athenians are asked to appoint three men to give to this agreement the validity of an arbitral award and to publish it at Calaurea, at the Asclepieum of Epidaurus and on the Athenian Acropolis. Part of the Epidaurian copy has survived (see No. XIV).

XIV

TROEZEN AND HERMIONE

I. G. iv. 941 (see p. 384). Add the articles by Nikitsky and Wilhelm cited under No. XIII.

Two fragments of a marble slab found at the Asclepieum of Epidaurus.

Date: about the beginning of the second century B. C.

[1] See A. Wilhelm, loc. cit. Haussoullier thought of Epidaurus (*Rev. Philol.* xxv. 336 ff.), P. E. Legrand of Megara (*B. C. H.* xxiv. 199).

The remarkable recurrence in this text of words and phrases used in No. XIII suggested that this was a fragment of the copy of that inscription which was erected at the Asclepieum (ll. 18, 19). Fränkel (*I.G.*, loc. cit.) objected that the Athenians could not conceivably have used the Doric dialect even in an award given to Peloponnesian states. But it must be noted that the Athenians are called in only to sanction and publish an agreement already formulated and concluded (*τὰ γεγονότα αὐτοῖς ὁμόλογα*) by two Dorian states: it was not to be expected that they should turn it into the *κοινή*. After Nikitsky's discussion of the fragment there can be no further doubt that it represents the same text as No. XIII.

XV

Epidaurus and Corinth

Ditt. *Syll.*[2] 452; *I.G.* iv. 926; *S.G.D.I.* 3025; Michel 20. [*Inscr. Jur.* i. pp. 342 ff.]

On a limestone stele found at the Epidaurian Asclepieum.

Date: 242–235 B.C.[1]

A long and well-preserved record of an arbitration award pronounced at the request of the Achaean League by a court of 151 Megarian *δικασταί*, and of the frontier delimitation carried out by a commission composed of thirty-one members of the court: the names of the arbitrators and of the commissioners are appended, arranged under their several tribes—Hylleis, Pamphyli and Dymanes.

[1] Raeder, *Arb.* p. 95, argues that the inscription may belong to the early part of the second century B.C., but the *stoichedon* writing points to the earlier date.

MAINLAND HELLAS NORTH OF THE ISTHMUS

XVI

PAGAE AND A NEIGHBOUR-STATE

I. G. vii. 189.
Found at Pagae, now lost.
Date: third century B. C.

Decree of Pagae in honour of the Achaeans and Sicyonians in general, and in especial of the judges sent by them to arbitrate in a dispute between Pagae and a neighbouring state, perhaps Megara or Aegosthena.

The record is seriously damaged, but this is the explanation of it adopted by Dittenberger (*I. G.*, loc. cit.) and Bérard (*Arb.* xiv. p. 21).

XVII

ACRAEPHIA AND COPAE

Ditt. *Syll.*² 454; *I. G.* vii. 2792. [P. Jamot, *B. C. H.* xiii. 407 f.]
On an immense cube of stone, near the road from *Karditza* to *Topolia*.
Date: third century B. C.

Boundary between the territory of Copae and that of Acraephia, as determined by the Boeotian League (ὁριτ̣τ̣[ά]ντων Βοιω[τῶν]). Cf. No. XXI.

XVIII

ACRAEPHIA AND NEIGHBOURS

I. G. vii. 4130.
Found in 1885 near the Ptoum (*Perdikovrysi*).
Date: about 150 B. C.

A decree (ll. 1–61) passed by the σύνεδροι and δῆμος of Acraephia in honour of the Larisaeans, of the three judges who, as their representatives, had tried the numerous cases (δίκαι) between Acraephia

and its neighbour-states in Boeotia, or had brought about an agreement between the contending parties, and of the secretary who had accompanied them.

The δίκαι in question seem to include cases between state and state as well as those between individual citizens of different states.

XIX

ACRAEPHIA AND AN UNKNOWN STATE

I. G. vii. 4130, ll. 62–75 and *I. G.* vii. 4131.
A half-cylinder of bluish marble, found in 1885 at the Ptoum.
Date: about 150 B. C.

Decree of the σύνεδροι and δῆμος of Acraephia, passed in honour of the Larisaeans and of three judges and their secretary sent by them.

It is uncertain whether the cases tried were those between citizens of Acraephia or between the state and one of its neighbours.

XX

ACRAEPHIA AND AN UNKNOWN STATE

P. Perdrizet, *B. C. H.* xxiv. 74 ff.
A limestone slab, discovered at Acraephia.
Date: about 150 B. C.

Fragment of a decree of Acraephia in honour of Megara and of three Megarian δικασταί and their secretary. Possibly this decree also refers to a tribunal for the settlement of internal and not of international disputes.

XXI

LEBADEA AND CORONEA

W. Vollgraff, *B. C. H.* xxvi. 570, restored and interpreted by A. Wilhelm, *Neue Beiträge zur griech. Inschriftenkunde* I (*Stzb. Wien*, clxvi. 1), 13 ff.

A limestone pillar found at *Granitsa*; now in the Museum at Lebadea.

Date: third century B.C.

Boundary between the Ἑλικωνιὰς γᾶ of Lebadea and the territory of Coronea, defined by the Boeotian League. Cf. No. XVII.

XXII

Delphi and Amphissa

E. Bourguet, *B. C. H.* xxxv. 460 ff. Cf. H. Pomtow, *Berl. Phil. Woch.* xxxii. 188 f.

On a block of grey limestone from the base which supported the golden chariot dedicated to Apollo by the Rhodians; found in May 1895, inside the eastern wall of the sacred precinct at Delphi.

Date: July–December 180 B.C.

Decree of the Delphians in honour of the Rhodian δᾶμος and of the nine Rhodian judges sent to arbitrate between Delphi and Amphissa in a dispute regarding the possession of certain τεμένη and the frontier between the two states.

The names of these nine Rhodian arbitrators are found on the official list of Delphian πρόξενοι (Ditt. *Syll.*[2] 268, ll. 212–21; *S. G. D. I.* 2581, ll. 216–25).

XXIII

Delphi and its Neighbours

Delphes, fasc. 2, No. 89.

Inscribed on the wall of the Athenian Treasury at Delphi.

Date: early second century B.C. (perhaps 195 B.C.).

Delphian decree passed in honour of Apollodorus of Athens for services rendered to Delphi in a trial involving sacred lands and debated territory (ἁ κρίσις ἁ περὶ τῶν τεμενέων καὶ τᾶς ἀμφιλλόγου χώρας). The

trial here referred to may be that of 195 B.C. mentioned in No. XXVI.

XXIV

DELPHI AND AN UNKNOWN STATE

Delphes, fasc. 1, No. 260.
Found in 1894 at the north-west corner of the terrace of the Siphnian Treasury.
Date: *ca.* 146 B.C.

A Delphian decree in honour of three judges sent from Hypata, praising them, *inter alia*, ἐπὶ τ[ᾶι κρ]ίσει ἃι πεποίηνται τῶ[ν] δ[ικ]ῶν. What these δίκαι were is uncertain. E. Bourguet (loc. cit.) conjectures, on the ground of *Delphes*, fasc. 1, No. 261, that they may have related to the sanctuary of Thermopylae, but thinks that the text may refer to a dispute between Carystus, Eretria and Chalcis, of which three Delphian fragments, unpublished as yet, give us an imperfect account. It is uncertain, however, whether the δίκαι are 'international' in character at all.

XXV

DELPHI AND AMBRYSSUS-PHLYGONIUM[1]

Delphes, fasc. 2, No. 136.
Inscribed on the Athenian Treasury at Delphi.
Date: *ca.* 140 B.C.

The text, originally thirty-three lines long, was arranged in two columns: of these the first has perished except for three insignificant fragments, but the second is almost entirely preserved and contains a boundary delimitation between Delphi and two of its neighbours on the east, settling the questions of

[1] For the position of these two states see G. Colin's commentary on this inscription, loc. cit.

frontier, water-rights, and *ἱερά*. The fact that the award was inscribed upon the Athenian Treasury makes it probable that the arbitrators were summoned from Athens.

A fragment (*Delphes*, fasc. 2, No. 142), which perhaps refers to the same occasion, mentions Athens and Ambryssus and a Roman proconsul.

XXVI

Amphissa and Anticyra-Ambryssus-Delphi

C. I. G. 1711; C. Wescher, *Étude sur le monument bilingue de Delphes* (Paris, 1868); the text revised by J. Schmidt, *Hermes*, xv. 275 ff.; *C. I. L.* iii. 567, and *Addenda*, p. 987, Suppl. i. p. 1317, No. 7303; the Greek text of the second century B.C. with corrections and important additions in G. Colin, *B. C. H.* xxvii. 104 ff. This last edition is cited throughout this essay.

On a large number of fragments of grey limestone discovered for the most part on or immediately below the terrace of the Apollo temple at Delphi. All except four (Colin, pp. 168 ff.) can be assigned to their places in three immense blocks which formed orthostatae in the south wall of the temple.

Date: 117 B.C. Below was added a further text, in Latin and Greek, of about A.D. 115.

The long inscription of 117 B.C. comprises a number of documents, beginning with (1) a letter of a Roman magistrate to the Amphictiones inviting them, in accordance with a *SC.*, to decide certain specified disputes (Col. A, ll. 1–20). This is followed by (2) a list of the Amphictiones, together with the states they represented (A ll. 20–33, B ll. 1–10), and (3) the formula of the oath taken by them (B ll. 10–16). Of the questions referred to their decision (4) the first (B ll. 16–28) relates to a deficit in the Treasury, which is estimated at fifty talents by twenty-two

votes out of twenty-four, (5) the second to the demarcation of the frontiers of the sacred land of Apollo (B ll. 28–33, C, D ll. 1–6), (6) the third (D ll. 7–20) to a deficit in some fund, (7) the fourth (D ll. 20–26) to the revenues from temple flocks and herds, (8) the fifth to fines inflicted upon thirteen Delphian citizens (D ll. 26–38, E, F).

Of the five decisions only the second comes within the scope of this inquiry. The Amphissans claimed the maintenance of the frontier delimitation carried out, probably about 195 B.C., by Pausanias the Thessalian and the commission over which he presided. On the other hand, the envoys of Anticyra, Ambryssus and Delphi put forward a claim on behalf of the settlement carried out by the hieromnemones perhaps in 337 B.C., and this was upheld by all the twenty-four votes of the council (B 32–C 8). The rest of the document contains a careful and detailed record of the frontier-demarcation carried out by the hieromnemones or their representatives in the presence of envoys of the states directly interested, and a list of those private persons who were occupying sacred lands and were warned that they must evacuate their holdings and destroy the buildings they had erected on them (cf. *S. G. D. I.* 2501, ll. 15 ff.).

Below is added in larger letters a rescript of C. Avidius Nigrinus,[1] a legate of Trajan, whose intervention about A.D. 115 was necessitated by fresh disputes. He refers to a boundary-delimitation carried out by the hieromnemones about 190 B.C. on the authorization of the Senate and of M'. Acilius.

[1] Pauly-Wissowa, ii. 2384.

XXVII

METROPOLIS AND OENIADAE

G. Soteriades, Ἐφ. Ἀρχ. 1905, 55 ff. No. 2.
On the reverse side of No. XXVIII: found in the temple of Apollo at Thermum.
Date: soon after 240 B.C.

This short but perfectly preserved record, dated by the name of the Aetolian *στρατηγός*, bears the title *Κρίμα γαϊκὸν Στρατικοῦ τέλεος* and contains the award of a boundary commission of Thyrrhean 'land-judges' (*γαοδίκαι*).

XXVIII

STRATUS AND AGRA

G. Soteriades, Ἐφ. Ἀρχ. 1905, 55 ff. No. 1.
On a hollow stele of bronze, found in the temple of Apollo at Thermum.
Date: 280–272 B.C.

A treaty and alliance between the Aetolians and the Acarnanians; one of its clauses provides for the delimitation of Pras, if possible by agreement between Stratus and Agra, otherwise by a commission of ten Aetolians and ten Acarnanians, excluding the citizens of the two cities immediately concerned (ll. 6–9).

XXIX

AETOLIA AND THYRRHEUM-CASSOPA

I. G. vii. 188. [Le Bas-Foucart 17.]
Found at Pagae, but now lost.
Date: 242–223 B.C.

A decree of Pagae relating to a dispute between the Aetolians on the one hand and on the other the

citizens of Thyrrheum (Acarnania) and Cassopa (Epirus), settled by a board of Achaean arbitrators. The trial appears to have taken place at Pagae.

This is Dittenberger's explanation of the document (*I. G.*, loc. cit.). According to him the Aetolians were aided by the Boeotians, the Thyrrheans and Cassopaeans by the Achaeans, but it is hard to believe that these last play simultaneously the rôles of arbitrators and of supporters. In the mutilated condition of the text, however, no certain conclusion is possible.

XXX

Hypata and Erythrae

I. G. ix. 2. 7, and *Addenda ultima*, p. viii; *S. G. D. I.* 1432. [A. Wilhelm, *Jahreshefte*, viii. 285 ff.]

On both sides of a small stele of white marble found at Hypata, but now lost.

Date: 196–146 B.C.

A. Award of a Chalcidian arbitral court in a dispute between Hypata and Erythrae in Aenis.

B. Date, names of arbitrators and of the representatives of the two contending states.

XXXI

Thessalians and Lamia

I. G. ix. 2. 488.

Found at Phayttus (*Zarkos*); a fragment of white marble.

Date: second century B.C.

A fragmentary record of an award, perhaps pronounced by a Phayttian tribunal, between the Thessalian Confederacy and Lamia.

XXXII

THAUMACI AND AN UNKNOWN STATE

I. G. ix. 2. 214.

A fragment of a stele, found at the monastery of *Antinitsa*, between Lamia and Thaumaci.

Date: second century B.C.

The inscription, in which the Lacedaemonians and the state of Thaumaci are mentioned, is too mutilated to be capable of restoration, but von Wilamowitz believes that it related to the dispatch of a body of judges from Sparta. The occasion was probably a dispute between Thaumaci and some neighbouring state: in l. 9 I would read [ἀν](τ)ιποιεῖσ[θαι] and in l. 14 ὧν ἀντι[ποιοῦνται] *vel sim.*

XXXIII

LARISA CREMASTE AND PTELEUM

I. G. ix. 2. 520.

A stele of marble, broken at top and bottom; found at Larisa.

Date: second or first century B.C.

A decree of Pteleum in honour of Nysander of Larisa, who, on the occasion of a dispute between Larisa Cremaste (Phthiotis) and Pteleum and an appeal to Rome on the part of the former, volunteered to go to Rome as a member of the Ptelean embassy.

XXXIV

MELITEA[1] AND NARTHACIUM

Ditt. *Syll.*[2] 307; *I. G.* ix. 2. 89.

A slab of grey stone, inscribed on both sides, found at *Limogardi*, north-east of Lamia.

Date: 150–147 B.C.

[1] The form Μελίτεια is the only one found in inscriptions and preponderates in literature, though Μελιτία is thrice written, perhaps

Copy of a *SC.* passed under the presidency of C. Hostilius A. f. Mancinus, the consul of 137 B.C., famous for his disgraceful surrender at Numantia. Two envoys from Melitea claimed, on behalf of their state, a piece of land from which they had been driven by the Narthacians and requested that it might be restored to them by the Senate. The Narthacian envoys, on the other hand, urged that the land was theirs according to the laws laid down by T. Quinctius Flamininus and ten Roman legati and confirmed by the Senate, and that two years previously their possession had been ratified by an arbitral court. The Roman Senate in the present case passed a resolution in favour of Narthacium.

XXXV

MELITEA AND PEREA[1]

Ditt. *Syll.*[3] 425; *I. G.* ix. 2. 205; *S. G. D. I.* 1415; Michel 22; Hitzig, *Staatsverträge*, No. 19, p. 15.
Found at Melitea (*Avaritsa*).
Date: shortly before 212 B.C.[2]

Award of three Calydonian arbitrators pronounced on the occasion of Melitea and Perea coalescing in a *συμπολιτεία*, so that the latter became a deme of the former. The judgement deals with frontiers, public land, the conditions upon which the union might be dissolved, and legal and judicial procedure. A four-

by copyists' error: the ethnic is always Μελιταιεύς or Μελιταεύς. See Ditt. *Syll.*[3] 425 n. 1.

[1] Steph. Byz. writes Πήρεια, Hesych. Πηρία. The ethnic is Πηρεύς.

[2] H. Pomtow, *Neue Jahrb.* clv. 788, cf. 799; A. Wilhelm, *Jahreshefte*, iii. 52. Raeder dates XXXV–XXXVII *ca.* 225 B.C.

fold publication is ordered of the award, which is witnessed by the whole Aetolian Council.

XXXVI

Melitea and Perea

I. G. ix. 2. p. xi. [M. Laurent, *B. C. H.* xxv. 344 ff.]
Found at Delphi, inscribed on the same stele as No. XXXVII.
Date: shortly before 212 B.C.

Fragments of ll. 1–7 of the award which is preserved in its entirety in No. XXXV.

XXXVII

Melitea and Xyniae

I. G. ix. 2. p. xi. [M. Laurent, *B. C. H.* xxv. 344 ff.]
Found at Delphi, on the same stele as No. XXXVI.
Date: shortly before 212 B.C.

A mutilated record of the award of arbitrators appointed by the Aetolians to settle a frontier dispute between Melitea and Xyniae, and of the delimitation of their boundaries. The document is fully dated and witnessed.

XXXVIII

Melitea-Chalae and Peumata
Perea-Phylladon and Peumata

I. G. ix. 2. p. xi.[1] [M. Laurent, *B. C. H.* xxv. 337 ff. No. 1.]
Found at the north-east corner of the temple of Apollo at Delphi.
Date: 290–229 B.C.

The record of two awards pronounced by a court of five arbitrators from Cassandrea.

[1] Two serious mistakes have crept into the text as given in *I. G.*, loc. cit. In l. 2 the name of the third ταγός is omitted, and n ll. 32, 33 the names of three of the witnesses are left out.

A. Settlement of a boundary in dispute between the Meliteans and Chalaeans on the one side and the Peumatii on the other [1] (ll. 6–16).

B. Delimitation of a frontier between Pereans and Phylladonians on the one side and Peumatii [2] on the other, in confirmation of a verdict previously given by the Meliteans.

XXXIX

Angeae and Ctimene [3]

A. S. Arvanitopoullos, *Rev. Philol.* xxxv. 289 ff. Nos. 41, 41*a*

Two fragments of a block of reddish marble excavated near the ruins of the lower town of Thaumaci: now in the Museum at Volo.

Date: late third or early second century B.C.

The two texts, inscribed on the front and on the right-hand side of the block, are unfortunately so much mutilated that satisfactory restoration is no longer possible. They seem, however, to contain a record of the evidence brought forward in an arbitration dealing with disputed land (41 ll. 15, 22) and boundaries (41 l. 16) and involving in some way the

[1] 'In the first part of this arbitration the land in question is claimed by the Meliteans and Chalaeans against the Peumatii, but the two claimants dispute its possession amongst themselves; the award assigns it to both, so that it remains undivided. In the second case, the arbitrators had to take into account a former verdict given by the Meliteans; after examination this is confirmed' (Laurent, loc. cit.). But I am not convinced of the existence of a conflict of claims between Melitea and Chalae.

[2] For the Peumatii see *I. G.* ix. 2. 519; U. Köhler, *Ztschr. f. Num.* xii. 111 ff. Cf. *I. G.* vii. 3287. Phylladon (in the form Φυλιαδών) occurs in No. xxxv, l. 13.

[3] For the position of these two states cf. G. Kip, *Thessalische Studien*, 126 ff.

cult of Omphale (41 l. 4; 41*a* l. 10). The editor is probably right in regarding the verdict as favourable to Ctimene (41 l. 22 f.), but his view that at a previous hearing of the case the arbitrators were unable to arrive at any decision (41*a* l. 24 f.) is more doubtful. The judges may, as he suggests, have been appointed by the state of Thaumaci.

XL

Phthiotic Thebes and Halus

I. G. ix. 2. p. x. [M. Laurent, *B. C. H.* xxv. 347 ff.]
Six fragments of a stele, discovered at Delphi.
Date: about 145 B.C.

This long inscription falls into two parts:

A. Lines 1–23 record the agreement into which Thebes and Halus enter, submitting a territorial dispute to the arbitration of Maco of Larisa and promising to abide absolutely by his verdict.

B. Lines 24–50 contain the award of Maco and his delimitation of the disputed frontier.

XLI

Cierium and Metropolis

I. G. ix. 2. 261.
A slab of white marble, broken above and on the left, found at Cierium (*Pyrgo-Mataranga*).
Date: between A.D. 15 and 35.

The inscription comprises three documents:

A. Fragmentary record of the result of an arbitration undertaken at the request of C. Poppaeus

Sabinus[1] by the *συνέδριον* of Thessalians at Larisa (ll. 1–6).

B. Letter to Sabinus from the *γραμματεὺς τῶν συνέδρων* containing an account of the same arbitration (ll. 7–16).

C. Letter to Sabinus from the *στρατηγός* of the Thessalians, reporting the same facts (ll. 16–23).

XLII

Phayttus and Ericinium

I. G. ix. 2. 487. Cf. Ἀρχ. Ἐφ. 1912, 65.
Fragment of a white marble stele, found near Phayttus (*Zarkos*).
Date: early second century B.C.

No continuous sense can be extracted from the fragments which are extant and legible: they refer, *inter alia*, to laws of Ericinium and of the Perrhaebians dealing with the sale and purchase of real property. We cannot determine whether the case is one between states or individuals. Kern says: 'Videtur urbs peregrina lites inter Phayttios et Ericinienses obortas diiudicasse. Dialectus indicat Graeciam septentrionalem; Thessalica urbs non est.'

XLIII

Condaea[2] and an unknown State

I. G. ix. 2. 521. [G. D. Zekides, Ἐφ. Ἀρχ. 1901, 125.] *I. G.* ix. 2. 1014 is apparently a fragment of the same inscription.
Found at Larisa.
Date: early third century B.C.

[1] See *Prosopographia Imperii Romani*, iii. p. 86, No. 627. He was *consul ordinarius* in A.D. 9, and legate of Moesia (to which Achaea and Macedonia were added in A.D. 15) from 12 to 35.

[2] For the site of Condaea see Ἀρχ. Ἐφ. 1912, 80 f.

Apparently a fragment of the report of an arbitral court, recording the evidence tendered at the inquiry into the claims put forward by Condaea and another state in a territorial dispute. The extant portion contains evidence of

1. Ladicus of Ascuris (ll. 5–18);
2. a citizen of Mopsium (ll. 19–30);
3. three other Mopseates (ll. 30–7)

in favour of the Condaeans. The arbitrators were probably appointed by Larisa.

XLIV

Mondaea and Azorus

I. G. ix. 1. 689; *S. G. D. I.* 3205; Ditt. *Syll.*[3] 453.
Stone found in 1812 at Corcyra, now lost.
Date: soon after 178 B.C.

Record of the award of three arbitrators, an Apolloniate, a Corcyraean and a Dyrrhachine, in a territorial dispute between Mondaea (in Thessaly, near the Macedonian frontier) and Azorus[1] (in Perrhaebia). The award is dated according to the Thessalian and Perrhaebian calendars.

ISLANDS OF THE AEGEAN[2]

XLV

Paros and Naxos

Two portions of the same stele of white marble, originally set up at Delos.
Date: 194–146 B.C.
A. *I. G.* xii. 5. 128.

[1] Oberhummer, Pauly-Wissowa, *s.v.*

[2] I omit the case referred to in my account of XXIV, since the pertinent inscriptions are not yet published.

Found at Paros, whither it had probably been carried from Delos.

B. *I. G.* xii. 5. 128 (*Addenda*, p. 308); Hitzig, *Staatsverträge*, No. 31, p. 21.
Found at Delos; now at Leeds.[1]

The first fragment contains part of a letter from Eretria referring to the request made to that state to act as arbitrator and its appointment of a court which succeeded in bringing about an agreement between the two litigant states. The second records the terms of the compromise thus accepted. Paros and Naxos agree to cancel all claims or charges brought against either state by the other or by citizens of the other. Sacrifices are prescribed to celebrate the agreement, and penalties to be inflicted on the state or individual transgressing it. The document is dated according to the Eretrian, Naxian, and Parian calendars, and provision is made for its due publication and its communication to the two interested states.

XLVI

Naxos and another State

K. Kourouniotes, Ἀρχ. Ἐφ. 1911, p. 34, No. 23.
Fragment of a marble stele, found in the temple of Apollo Daphnephorus at Eretria.
Date: early second century B.C.

The text, which is much mutilated, refers to [σύ]νδικοι Ναξίων οἱ ὁμολογ . . . (l. 8),[2] and closes with the names of six men described as δημοσίαι παρόντες

[1] A. Wilhelm, *Jahreshefte*, viii. 289; E. L. Hicks, *J.H.S.* xi. 260.

[2] Professor Wilhelm has pointed out to me that this is the true restoration; the editor restores [ἐ]νδίκοιν ἀξιῶν οἱ ὁμολογ[εῖν.

(l. 9 ff.). It therefore probably refers to an international dispute, possibly the same to which No. XLV relates, in which Naxos was one of the litigant states and Eretria probably furnished the arbitral court.

XLVII

Melos and Cimolus

Ditt. *Syll.*² 428; *I. G.* xii. 3. 1259; *S. G. D. I.* 3277; Michel 14; H. H. 150.
Found at Smyrna.
Date: soon after 338 B.C.

This inscription, perfectly preserved, records the award of the Argive δᾶμος in a dispute regarding the ownership of three islets, which are assigned to the Cimolians.

XLVIII

Eleutherna and Macedon

F. Halbherr, *A. J. Arch.* (first series) xi. 582 ff.: corrected by A. Wilhelm, *Attische Urkunden* I (*Stzb. Wien*, clxv. 6), 50 ff.
The right-hand portion of a gable-topped stele of white marble; found at Eleutherna (*Prinies*), now at Retimo.
Date: 278–239 B.C.

This treaty between Eleutherna and the Macedonian king Antigonus Gonatas contains a clause (ll. 17–22) providing that if the Eleuthernaeans fail to send the required aid within the stipulated time and to fulfil any of the other terms of the compact, they shall be liable to a fine of 10,000 drachmas, the question being decided by some state to be selected by common consent.

XLIX

GORTYN AND CNOSSUS

I. v. Magnesia 65a, b; *S. G. D. I.* 5153, 5154. Wilhelm has shown that *I. v. Magnesia* 75, 76 belong to the same text, and the whole is published by P. Deiters, *Rheinl. Mus.* lix. 565 ff. Several of Deiters' readings and restorations are corrected by A. Wilhelm, *B. C. H.* xxix. 577 and *Attische Urkunden* I (*Sitzb. Wien*, clxv. 6) 53.

Inscribed on a wall in the western portico of the Agora at Magnesia on the Maeander; now at Berlin.

Date: soon after 216 B.C.[1]

Portions of two decrees:

A (65a + 75). Decree of Gortyn, replying to a Magnesian embassy which offered to arbitrate in the war between Gortyn and Cnossus[2] and asked that permission should be granted to certain Cretans to return to their homes. The Gortynians praise the Magnesians and their two envoys, and reply that (1) Ptolemy (Philopator) is adopted by them as arbitrator, but that (2) they cannot accede to the proposals put forward with reference to the Cretans settled at Miletus.[3]

[1] P. Deiters, op. cit. 577.

[2] An Epidamnian decree found at Magnesia (*I. v. Magnesia* 46 ll. 10 ff.; Ditt. *Syll.*[3] 259) praises the Magnesians for services rendered to the κοινὸν τῶν Κρηταιέων, and speaks of them as διαλύσαντες τὸν ἐμφύλιον πόλεμον. But that phrase must refer to Magnesian mediation on another occasion. Mylasa too seems to have urged the Cretans at some time to make peace (*S. G. D. I.* 5158).

[3] For the restoration of this passage see Wilhelm, *Attische Urkunden*, loc. cit. That the Asiatic Miletus is here meant, and not Milatus in Crete, has been pointed out by Deiters, op. cit. 572 f.

B (76+65 b). Decree of Cnossus to the same effect and in very similar phrases. The Cnossians add that it is not of their own desire but of necessity that they are at war with the Gortynians and that an arbitration between the two confederacies is likely to lead to the speediest settlement.

L

Gortyn and Cnossus

S. G. D. I. 5015: cf. P. Deiters, *Rhein. Mus.* lix. 572; A. Wilhelm, *B. C. H.* xxix. 577. [F. Dümmler, *Philologus*, liv. 205 ff.]
From the Pythium at Gortyn.
Date: soon after 216 B.C.[1]

Under the title Συνθ[ήκα Γορτυνίων καὶ Κνωσ[ίων] come the terms of a peace concluded between the two states on the request of Cnossus. In ll. 5, 6 there is a reference to an embassy of Ptolemy sent to Gortyn, and the intervention of the king is again mentioned in ll. 9, 10.

Part of the boundary settlement of Ptolemy on this occasion perhaps survives in *S. G. D. I.* 5016, which relates, as does the above treaty, to a struggle between Gortyn and Cnossus for Apellonia.

LI

Cnossus and Tylissus

W. Vollgraff, *B. C. H.* xxxiv. 331 ff.
Lower part of a grey limestone stele found at Argos in August, 1906.
Date: about 450 B.C.

[1] Blass dates it after 183 B.C., but Deiters has shown that it must be contemporaneous with No. XLIX.

This interesting archaic inscription contains the last twelve clauses of a treaty concluded between the neighbouring states of Cnossus and Tylissus by the arbitration, or possibly in consequence of the mediation, of their common metropolis, Argos.

§§ 1–4 regulate the relations of the two states and their citizens in the matters of

1. the calendar;
2. the right to hold real property;
3. seizure of land for debt;
4. frontiers.

§ 5 prescribes the offering to be made to Argive Hera on the occasion of certain sacrifices.

§ 6 directs that booty taken in war by the Cnossian confederacy be divided amongst the confederates by the Cnossians and Argives in common.

§§ 7, 8 regulate certain religious questions at Cnossus.

§ 9 provides for hospitality to be shown to visitors from Tylissus or Cnossus coming to the great festivals at the other city.

§ 10 secures that each state may claim the help of the other in diplomatic negotiation.

§ 11 lays down the punishment for breaches of hospitality.

The treaty is sanctioned by the Argive ἀλιαία and dated: at the close a clause was subsequently added by the Tylissians,

§ 12, placing Tylissians visiting Argos on the same footing as Cnossians.

LII

LATOS[1] AND OLUS

F. Dürrbach and A. Jardé, *B. C. H.* xxix. 204 ff. Cf. A. Wilhelm, *ibid.* 577.
Found at Delos in 1903; upper part of a white marble stele.
Date: towards the end of the second century B. C.

A decree passed by Latos and Olus in common, very similar in purport and phraseology to No. LIII, from which it cannot be separated by a long interval, since in both the same man is chief cosmus at Latos. On the request of a Cnossian embassy, the two states determine to refer to the arbitration of Cnossus all their outstanding differences; the award is to be given within ten months, to have absolute validity, and to be inscribed in the five sanctuaries referred to in LIII.

LIII

LATOS AND OLUS

Ditt. *Syll.*[2] 514; *S. G. D. I.* 5149; Michel 28.
Found at Delos.
Date: towards the close of the second century B. C.[2]

A record of a resolution passed by the citizens of Latos and of Olus in common, on the request of Cnossian envoys, to entrust to Cnossus the arbitral decision of all outstanding differences between the two states. Provision is made for the publication of this agreement and of the arbitral awards consequent

[1] For the name Λατώς see *S. G. D. I.* iii. 2. 3, p. 333.

[2] In l. 43 the Athenian archon Sarapion is mentioned: his year of office is dated in 102/1 by Homolle (*B. C. H.* xvii. 155 ff.) and Dittenberger (*Syll.*[2] 514 note 27), in 104/3 by W. S. Ferguson (*Athenian Archons*, p. 81), and in 116/5 by W. Kolbe (*Die attischen Archonten*, p. 128 f.).

upon it in four Cretan sanctuaries and in that of Apollo at Delos. The decisions are to be reached within six months, i.e. before the close of the civil year, and are to have unconditional validity, their observance being guaranteed by a pledge given by the states and the infliction of a fine in case of non-compliance.

A later addition, to which the consent of all three states is given, extends by further twelve months the time within which judgement is to be given.

LIV

HIERAPYTNA AND PRIANSUS

S. G. D. I. 5040; Michel 16; Hitzig, *Staatsverträge*, No. 46, p. 29.
On a marble slab from Crete, now in the Ashmolean Museum, Oxford.
Date: second (or end of third) century B. C.

In this treaty between Hierapytna and Priansus, on the south coast of eastern Crete, it is stipulated that any one contravening its terms may be brought to trial before the Common Court (*κοινὸν δικαστήριον*), and that the accuser if successful shall receive one-third of the sum assessed as penalty, the remainder being paid to the aggrieved state (ll. 46–52). Outstanding disputes are to be settled with all speed in a court agreed upon by both states, and future claims shall be decided before a tribunal to be appointed by a state agreed upon and in accordance with the treaty (*σύμβολον*) drawn up by both the contracting parties (ll. 57–70).

The reference here, though perhaps primarily to disputes between citizens, seems to cover also all existing and prospective international differences.

LV

Hierapytna and Macedon

S. G. D. I. 5043, corrected by A. Wilhelm, *Attische Urkunden* I (*Stzb. Wien*, clxv. 6), 50 ff.

Two fragments of grey stone, written on front and back; found at Hierapytna.

Date: 278–239 B.C.

This treaty, concluded with Antigonus Gonatas, contains a clause (ll. 22–25) exactly similar in purport to that of No. XLVIII, though slightly differing from it in expression.

LVI

Itanus and Hierapytna

Ditt. *Syll.*² 929; *S. G. D. I.* 5060; *I. G. Rom.* i. 1021: cf. M. Holleaux, *Hermes*, xxxix. 78 ff.; G. Colin, *Rome et la Grèce*, 510 f.; Ἐφ. Ἀρχ. 1908, 238. [*I. v. Magnesia* 105.]

Portions of two copies of the same text have survived: (A) On a slab of grey stone, complete above, but broken below, found in the monastery of *Toplu*, near the ancient Itanus, are ll. 1–87; (B) Ll. 28–141 are on a stone found at Magnesia on the Maeander, now in Berlin.

Date: 139 B.C.

This long document opens with the date and the names of the eighteen Magnesians composing the arbitral tribunal and a reference to the circumstances leading up to its appointment (ll. 1–11). After some observations on the value of peace and concord and the duty of friendly states to settle any disputes which may arise (ll. 11–18), the judges record the Roman intervention and request to the Magnesians to undertake the task of arbitration, the considerations which led the state to concur, and the details of the appointment of the court and the hearing of the

evidence (ll. 18–31). An attempt to settle the dispute by agreement having failed, the passing of a formal award and the publication of the present report upon the case became necessary (ll. 31–37). The question at issue is then defined more precisely, and the Senate's instructions are quoted in which the point to be settled by the court is carefully limited (ll. 37–54). The statement of the actual award relating to one part of the dispute (ll. 54–56) is followed by a full report of the evidence upon which the decision is based (ll. 56–94). The evidence relating to the other question at issue, the possession of the island of Leuce (*Kouphonisi*), is then stated at considerable length, and some remarks are made upon the weakness of the Hierapytnian claim (ll. 94–141): though the award itself is lost, there can be no doubt that in this case also it was favourable to the Itanians.

ASIA MINOR AND THE ADJACENT ISLANDS

LVII

ILIUM AND ITS NEIGHBOUR-STATES

C. I. G. 3598.

Fragment of a slab of white marble, found at *Chiplak*, near Ilium, now in Paris.

Date: second century B.C.[2]

A fragment of a decree of Ilium in honour of four states—Rhodes, Delos, Paros[1] and another—and of the judges sent by them to settle a dispute, apparently between Ilium and a state or states in the vicinity. Special measures are taken for the publication and the inscription of the decree.

[1] Bérard, *Arb.* xxxiv, restores Παρι[ανῶν] in l. 11 in place of Παρί[ων], which Boeckh preferred. Paros seems to me far more likely than Parium. [2] Boeckh dates it before 188 B.C.

LVIII

MYTILENE, METHYMNA, ANTISSA AND ERESUS

F. Dürrbach and A. Jardé, *B. C. H.* xxix. 210 ff., to which *S. G. D. I.* 319 must be added. Cf. A. Wilhelm, *B. C. H.* xxix. 577.

Found at Delos in June, 1903, between the Porinos Oikos and the Artemisium.

Date: 199–168 B.C.

A fragment of a treaty of alliance concluded by the four Lesbian cities. No continuous sense can be derived from the mutilated text, but the final clauses[1] deal with the settlement of disputes between the contracting states, which are to be determined by agreement or by judicial award (*τὰ διαλυθέντα ἢ κριθέν[τα]* l. 47); we cannot tell whether the decision was to rest with an external tribunal, but such seems the most probable hypothesis.

LIX

PITANE AND MYTILENE

Ditt. *O. G. I.* 335. [*I. v. Pergamon* 245.]

On twenty-five fragments of a large marble stele, found at Pergamum.

Date: 150–133 B.C.[2]

This lengthy inscription consists of three parts:

A (ll. 1–45). Decree of Pitane, thanking the Pergamenes, who have sent an embassy to restore, if possible, friendly relations between Pitane and Mytilene, and accepting them, upon certain stated conditions, as

[1] From l. 43 onwards, according to the editors; but perhaps the commencement of this section should be placed somewhat earlier, say at l. 39.

[2] See Dittenberger's note, loc. cit.

arbitrators in every outstanding difference between the two states.

B (ll. 46–88). Decree of Mytilene, with the same purport and in almost identical terms.

C (ll. 89–156). Decree of Pergamum, expressing its acceptance of the task of arbitration and containing a report on the case, a summary of the evidence brought forward and the award pronounced by the court.

LX

Sardis and Ephesus

Ditt. *O. G. I.* 437; Hitzig, *Staatsverträge*, No. 36, p. 24 f.; *I. G. Rom.* iv. 297. [*I. v. Pergamon* 268.]

Five fragments of a slab of bluish marble found at Pergamum.

Date: 98 B.C.

Under the general title [Συνθῆκαι Σαρδια]νῶν κ[αὶ Ἐφεσί]ων come the following documents:

A (ll. 2–25). A letter from the proconsul Q. Mucius Scaevola to the Sardians, referring to the games founded in his honour and urging them to settle their dispute with the Ephesians.

B (ll. 26–55). A similar letter to the Ephesians.

C (ll. 56–96). A treaty[1] between Sardis and Ephesus embodying the settlement of all outstanding disputes and regulating the relations between the two states. If either should transgress the agreement, the question is to

[1] Ditt. *O. G. I.* 437 note 8 claims that the whole of this agreement was brought about by arbitration: but Pergamum is spoken of as ἡ μεσιτεύουσα τὰς συνθήκας πόλις (l. 76), a phrase which involves mediation but not necessarily arbitration.

be referred to arbitration. The final clauses deal with the publication and ratification of this treaty, and record the names of the envoys who represented either state in the negotiation of this settlement.

LXI

Samos and Priene

Ditt. *O. G. I.* 13; Michel 36; *I. v. Priene* 500; U. von Wilamowitz, *Stzb. Berl.* 1906, 39 ff. [Hicks 152.]

Stone found in Samos, now in the Ashmolean Museum, Oxford.

Date: about 283–282 B.C.[1]

Rescript of Lysimachus, King of Thrace (306–281 B.C.), informing the Samians of his arbitration in the dispute between them and the Prienians. The circumstances under which the trial was undertaken are detailed (ll. 1–11), and the arguments used by the Prienians in support of their claim are summarized (ll. 11–27). The counter-arguments of the Samians are next stated, but the loss of the lower part of the stone has left only the opening phrases extant (ll. 27–32).

LXII

Samos and Priene

S. G. D. I. 3758; *I. v. Priene* 37; cf. U. von Wilamowitz, *Stzb. Berl.* 1906, 41 ff. [*I. G. Brit. Mus.* cccciii.]

On a number of blocks of the south anta and the south cella-wall of the temple of Athena at Priene: now in the British Museum.

Date: early in the second century B.C.[2]

[1] See F. Hiller von Gaertringen, *I. v. Priene*, p. 209; Bérard, *Arb.* p. 64 f., argues for the date 287 B.C.

[2] Bérard, *Arb.* p. 66, dates this arbitration in 242–239 B.C., but this is too early. Hiller von Gaertringen (*I. v. Priene*, p. 43) places it between 197 and 190 B.C., E. Preuner (*Hermes*, xxix. 530 ff.) about 180 B.C.

Record of an arbitral award settling a territorial dispute between Samos and Priene. The title Πριηνέω[ν καὶ Σ]αμίων is followed by a list of the five Rhodian arbitrators, a reference to the question at issue and the terms of the appointment of the tribunal; next come the names of the official representatives of Samos and Priene at the trial (ll. 1–20). A brief account of the inquiry leads up to the statement of the award and a record of the names of the officials to whom copies of the document were delivered (ll. 20–44). Then follows a full account of the evidence adduced by the Samians in three speeches and by the Prienians in two (ll. 44–118), and finally a summary is given of the considerations which led the tribunal to its decision (ll. 118–157).

To this report is appended an exact statement of the position of the frontier between Samian and Prienian territory and of the boundary-stones set up under the direction of the Rhodians (ll. 158–170).

A number of small fragments collected in *I. v. Priene* 38 probably belong to this same record.

LXIII

Samos and Priene

I. v. Priene 40. [*I. G. Brit. Mus.* cccciv.]
From the cella-wall of the Athena temple at Priene: now in the British Museum.
Date: shortly before 136 B.C.

Latter part of a *SC.* dealing with the Prienian claims to the disputed territory and the many arbitral awards given in their favour; it confirms the Rhodian decision recorded in No. LXII.

LXIV

Samos and Priene

Ditt. *Syll.*² 315; *I. v. Priene* 41. [*I. G. Brit. Mus.* ccccv.]
Four fragments of the cella-wall of the Athena temple at Priene; now in the British Museum.
Date: 136 B.C.

Copy, almost complete, of a *SC.* passed under the presidency of Ser. Fulvius Flaccus, the consul, couched in the usual phraseology. In view of the conflicting claims to a piece of land brought forward by Samian and Prienian envoys, the Senate resolved to confirm the award of the Rhodian arbitrators recorded in No. LXII.

LXV

Samos and Priene

I. v. Priene 42.
A number of fragments of the wall of the Athena temple at Priene.
Date: after 133 B.C.

Report drawn up by the (Mylasian ?) arbitrators appointed to settle the dispute between Samos and Priene in accordance with a *SC.* They confirm the award and the frontier-delimitation of the Rhodians and give an account of their restoration of the boundary tokens with the assistance of representatives of both states, who are highly commended for their services. Part of the description of the boundary and of the steps taken by the arbitrators to mark it permanently survives in a passage of forty-four mutilated lines (ll. 40–83).[1]

LXVI

MAGNESIA ON THE MAEANDER AND PRIENE

Ditt. *Syll.*[3] 928; *I. v. Priene* 531: cf. A. Wilhelm, *Jahreshefte*, vi. 11; M. Holleaux, *Rev. Ét. Anc.* v. 221; G. Colin, *Rome et la Grèce*, 509 f. [*I. v. Magnesia* 93.]

On a block of white marble, inscribed on all four sides, found in 1893 in the Magnesian Agora.

Date: soon after 190 B.C.[1]

A (ll. 1–33). Decree of the Magnesians relating the circumstances of the arbitral decision given in their favour by a Mylasian tribunal and praising those who had represented the state at the trial. Provision is made for the public inscription of a number of documents pertinent to the case.

B (ll. 34–63). Copy of the letter of the praetor M. Aemilius to the state of Mylasa, requesting it to undertake the task of arbitration in accordance with a *SC.*, of which the letter contains a copy.

C (lost). The Mylasian decree followed, accepting the task and providing for the appointment of the tribunal.

D (lost). The Mylasian reply to M. Aemilius has similarly perished.

E (ll. 64–90). The award, of which only a fragment survives, deals with and rejects the evidence brought forward by the Prienians.

[1] G. Colin, op. cit. 509 note 2, shows that a certain Lepidus was urban praetor at Rome in 143 B.C.; if, as he supposes, this is the same as the M. Aemilius here referred to, we must date this inscription in 143, considerably later than previous editors, judging by the character of the writing, had done.

F (ll. 91–106). A list of the Magnesian ἔγδικοι is appended, originally followed by the names of the other representatives of the state.

LXVII

Priene and Miletus

I. v. Priene 27. [*I. G. Brit. Mus.* ccccxii.]
From the wall of the Athena temple at Priene; now in the British Museum.
Date: soon after 200 B.C.

The closing portion of the letter of a king or proconsul ordering the demarcation of the boundary between the Prienian and the Milesian territory, in accordance with an arbitral verdict previously pronounced by the people of Smyrna.[1]

To about the same time belongs *I. v. Priene* 28, part of a treaty between Priene and Miletus relating to measures taken by the two states for mutual defence and to the conduct of trials between their respective citizens.[2] We cannot, however, say for certain whether this treaty was the result of arbitration, mediation or ordinary diplomatic negotiation.

LXVIII

Priene and Miletus

I. v. Priene 111.
Inscribed on the wall of the north portico of the Agora at Priene.
Date: early first century B.C.

Portions of an honorary decree, which originally comprised more than 320 lines, recording in chrono-

[1] Hicks thought of Ptolemy Euergetes as the writer, Hiller von Gaertringen of one of the Attalid princes.

[2] Cf. Hitzig, *Staatsverträge*, No. 34, p. 22 f.

logical order the services rendered to Priene by a certain Crates. In ll. 143 ff. it recounts a quarrel between Priene and Miletus which had been referred to the Senate; one at least of the questions at issue had apparently been settled in favour of Priene by an arbitral court representing Erythrae (ll. 123 ff., 146), but a fresh difficulty arose and the Milesians appear to have attempted to gain the better of their rivals by a trick (ll. 149 ff., No. LXIX, l. 23 δὶς πεφυγοδ[ικηκότων]). On this last occasion the arbitrators were citizens of Sardis (No. LXIX, ll. 16, 20).

The mutilated condition of this inscription and of that which follows makes it impossible for us to follow the narrative in detail.

LXIX

Priene and Miletus

I. v. Priene 120.

Inscribed on the eastern wall of the north portico of the Agora at Priene.

Date: early first century B.C.

This fragment of an honorary decree refers to its recipient, whose name is not preserved, as having gone to Sardis to represent Priene in a suit in which the Milesians brought certain charges against the Prienian people. The Roman Senate is also mentioned, and it is probable that it requested Sardis to act as arbitrator. The occasion is almost certainly that referred to in the preceding inscription (LXVIII).

LXX

Miletus and Myus

S. G. D. I. 5493; *I. v. Priene* 458; H. Knackfuss, *Das Rathaus von Milet*, pp. 112 ff., No. 9.

Two fragments of a stele, written στοιχηδόν, found at Miletus.
Date: soon after 392 B.C.

The upper part of the record is lost save for the ends of the first twelve lines (*Stzb. Berl.*, 1901, 905). The second and main fragment begins with the names of the judges—in each case five in number—representing Erythrae, Chios, Clazomenae, Lebedus, and Ephesus. The failure of the representatives of Myus to maintain their cause in the trial leads to the acknowledgement and confirmation of the Milesian claim to be the rightful owners of the disputed territory by Struses (probably the Struthas of Xen. *Hell.* IV. 8. 17 ff., Diod. xiv. 99), satrap of Ionia. The names of the Milesian advocates at the trial are appended.

LXXI

Mylasa and Stratonicea

A. Hauvette-Besnault and M. Dubois, *B. C. H.* v. 101 ff.

Fragment of marble, broken above and below, found at Mylasa.
Date: after 189 B.C.

Fragment of an honorary decree of a tribe or of the people of Mylasa, commending an individual who, besides other services rendered to the state, took a decisive part in a dispute between Mylasa and Stratonicea settled by arbitration.

Sonne (*Arb.* xxvi) and Bérard (*Arb.* xlii) agree in interpreting ll. 1–3 in this sense, but it must be admitted that the reference to international arbitration is highly doubtful.

LXXII

MYLASA AND ALABANDA

J. R. S. Sterrett, *Papers of the American School, I*, No. 9, p. 26.
Found at Assus, below the bouleuterion.
Date: second century B.C.

A record of the honours paid to Lanthes, probably a citizen of Assus, for services rendered by him as judge to four states, of which Mylasa and Alabanda are two. Here again the reference to international arbitration is far from certain.

LXXIII

MYLASA AND ANOTHER STATE

Le Bas-Waddington 423. *Ath. Mitt.* xv. 265 f. probably belongs to this or to the following inscription.
Found at Mylasa.
Date: not before the second century B.C.

Fragment of the report of a frontier-commission to determine the boundaries between Mylasa and a neighbour-state.

LXXIV

MYLASA AND ANOTHER STATE

Le Bas-Waddington 424.
Found at Mylasa, to the west of the city.
Date: not before the second century B.C.

Fragment of the report of a frontier-commission, like No. LXXIII.

LXXV

CALYMNA AND COS

Ditt. *Syll.*[3] 512; *S. G. D. I.* 3591. [*I. G. Brit. Mus.* ccxcix.]
A slab of white marble, inscribed on front and back: discovered at Calymna, now in the British Museum.
Date: second or first century B.C.

A sum of money had been lent to the Calymnian state by two Coans, Pausimachus and Hippocrates. The heirs of the former, probably his grandsons, subsequently claimed the return of their share of the loan; the Calymnians, however, maintained that the debt had been repaid and that they were no longer under any obligation. The Cnidians were asked to arbitrate, and gave their award in favour of the Calymnians.

The inscription consists of four parts:

A (ll. 2–9). The oath taken by members of the Cnidian tribunal.

B (ll. 10–52). Directions regarding the production of evidence and the conduct of the trial.

C (ll. 53–82). A statement of the case for the claimants and of the amount of their claim.

D (ll. 83–90). A record of the verdict and list of the advocates on each side.

The case cannot be regarded as one of international arbitration in the full sense, since the claimants were private citizens of Cos. Yet the Coan state appears to have taken up their cause,[1] and it may therefore be treated as one between the two states concerned.

LXXVI

Calymna and Cos

S. G. D. I. 3592.

Found at Calymna, on the road leading from the modern town to the port of *Linari*.

Date: as No. LXXV.

This fragment clearly refers to the dispute between

[1] Ditt. *Syll.*[2] 512 note 8.

the sons of Diaporas[1] and the Calymnian state, and perhaps contained a summary of the evidence; in its present mutilated condition, however, no continuous sense can be derived from it.

THE PONTUS, AND UNNAMED STATES

LXXVII

CALLATIS AND AN UNKNOWN STATE

S. G. D. I. 3089.

Stone slab, found in the district of Yenibazar; now in the residence of the Metropolitan at Shumen.

Date: about 133 B.C.

A decree of Callatis in honour of Stratonax son of Lygdamis of Apollonia, who acted as mediator or arbitrator in a war between Callatis and S . . . .[2]

LXXVIII

TWO UNNAMED STATES

C. Jireček, *A. E. M.* x. 190.

Found at Jaly Üč Orman, 18 km. north of Caliacra in Scythia Minor.

Date: not before the first century B.C.

Sonne (*Arb.* XLIV) has conjectured that this fragmentary record, in which the words [τ]ὰ νείκη, ὅρος and [Καλλ]ατιανῶ[ν] are distinguishable, refers to a boundary delimitation. But this interpretation is very doubtful.

[1] This, not Diagoras, is the form used consistently throughout the record.

[2] 'Stratonis est urbs finitima apud Sprunerum tab. xvii' (Sonne, *Arb.* xxxvii).

LXXIX

Two unnamed States

Olympia v. 49.
Fragment of a statue-base found at the north-west corner of the temple of Zeus at Olympia.
Date: second century B.C. ?

A fragment which contains the word κρίσις three times and a reference to ὁμόνοια, and may perhaps refer to an arbitration between two states.

LXXX

Two unnamed States

Olympia v. 51.
Two fragments, inscribed on both sides, found at Olympia in 1876 and 1878.
Date: third century B.C.

The text is too fragmentary to be interpreted with certainty, but it may refer to the settlement of a dispute between two states. The word Δυμα[ί]ων may point to Dyme as a party to the arbitration, but the restoration is not certain, as the word may have been Δυμά[ν]ων.

LXXXI

Two unnamed States

I. G. ix. 1. 690; *S. G. D. I.* 3204.
Stone found at Corcyra in 1812.
Date: early in the second century B.C.

To judge by some phrases which have survived on the mutilated stone, it seems to refer to a boundary dispute settled by arbitration. The Athamanians, mentioned in l. 1, may be one of the contesting

states, and the provenance of the stone suggests Corcyra as the arbitrating state.

LXXXII

Two unnamed States

I. G. xii. 1. 1031; *S. G. D. I.* 4319.
Found at Porthmus (*Tristomo*), on the island of Carpathus.
Date: second century B.C.

The latter part of the record of an agreement made between two states which requested a third to act as arbitrator or mediator. The names of the states are not preserved, but it is almost certain that Carpathus, or perhaps Brycus, was either one of the disputants or the mediating state.

II

DISPUTES SUBMITTED TO ARBITRATION

One of the fundamental problems facing the student of International Law is to determine the limit, if limit there be, of the disputes susceptible of arbitral settlement. No final answer to the question has yet been reached, but the experience of the last century has enabled lawyers to formulate at least a provisional reply. 'It is clear from the experience of the past,' Sir H. Erle Richards has recently said,[1] 'that in what may be called lesser disputes there need be no limitation, and the number of treaties already in force by which nations are bound to arbitrate in all such cases is proof that the view has become generally accepted. But subject to a few exceptions . . . in all Arbitration Treaties hitherto, the agreement to arbitrate has been limited to questions of a legal nature, or to questions arising on the construction of Treaties, and there has been added a clause excepting from arbitration disputes involving matters of vital interest or the independence or honour of the contracting parties.' It will be our task in the present chapter to estimate, in outline at least, the contribution made by the experience of the Greeks towards the answer to this question.

By far the largest class of disputes submitted to arbitration in the ancient Greek world appears to have consisted of those which arose out of conflicting

[1] *The Progress of International Law and Arbitration* (Oxford, 1911), p. 19.

territorial claims. That such was really the case and that we are not misled by the chance preponderance of such disputes amongst those which are recorded in our extant sources is an inference we can hardly fail to draw from the terms of a treaty of alliance concluded in 418 B.C. between the Spartans and the Argives. One of its clauses runs thus :[1]

αἰ δέ τινι τᾶν πολίων ἢ ἀμφίλλογα, ἢ τᾶν ἐντὸς ἢ τᾶν ἐκτὸς Πελοποννάσω, αἴτε περὶ ὅρων αἴτε περὶ ἄλλω τινός, διακριθῆμεν.

But the dispute 'regarding frontiers' is one which may take various forms. There are occasions, for example, on which the only question raised is one of possession and not one of frontier-delimitation,—in which, that is to say, the limits of the area in dispute are acknowledged by both parties, and no survey or examination of boundaries is required. Such was the dispute between the Melians and the Cimolians, both of whom laid claim to the rocky islets of Polyaega, Eterea, and Libea,[2] just as at an earlier period Sigeum had been in dispute between Athens and Mytilene[3] and Salamis between Athens and Megara.[4]

Sometimes, however, the issue was less simple; it

[1] Thuc. v. 79. 4. In *I. G.* iv. 556 (H. H. 120: cf. A. Wilhelm, *Rhein. Mus.* lvi. 571 ff.; M. Fränkel, ib. 233 ff.) there is a reference to the settlement of territorial disputes between the states which joined in the *κοινὴ εἰρήνη* of 362–1 B.C., but no details can be learned from the fragmentary text.

[2] XLVII.

[3] Hdt. v. 95; Strabo xiii. 600 (Demetrius of Scepsis); Diog. Laert. i. 74 (Apollodorus). Cf. Arist. *Rhet.* i. 15. 13, p. 1375 b.

[4] Strabo ix. 394; Plut. *Solon* 10; Diog. Laert. i. 48; Aelian, *Var. Hist.* vii. 19; Quintil. v. 11. 40. Cf. Arist. *Rhet.* loc. cit.

was the precise position of the frontier-line which was in question, and in such cases the task of the arbitrators was of a slightly different character. Instead of treating the area in dispute as a single and indivisible whole, which must be assigned to one or other of the contending parties, they were expected to draw a line of demarcation between the territories of the two states. Such was the task with which the Megarian tribunal was entrusted, on the command of the Achaean League, by the Corinthians and Epidaurians,[1] or that which the Thyrrhean land-judges (γαοδίκαι) undertook to perform for Metropolis and Oeniadae in Acarnania.[2] Or again, the dispute might centre round the possession of certain rights, falling short of absolute ownership, over a city or territory or temple, as when Corinth and Corcyra submitted to arbitration their respective claims to Leucas,[3] or the Delians and the Athenians contested before the Amphictiones the administration of the temple of Apollo at Delos.[4]

Some of the arbitration records give us at least indications of the causes which might make the possession of a certain area, small in itself, of great or even vital importance to a state. The value of the land was sometimes due to the temple or temples situated therein. The age-long dispute between Spartans and Messenians for the possession of the ager Dentheliates[5] was primarily due to the fact

[1] XV. [2] XXVII. [3] Plut. *Them.* 24.

[4] Dem. xviii. 134; Hyper. *frag.* 67, ed. Kenyon; *Vit. X Orat.* 850 A.

[5] See E. Curtius, *Peloponnesos*, ii. 157; C. Bursian, *Geographie*, ii. 169 f.; W. Kolbe, *Stzb. Berl.* 1905, 61 f., *Ath. Mitt.* xxix. 364 ff.

that within its boundaries lay the sanctuary of Artemis Limnatis. Indeed, Tacitus lays all the emphasis upon this fact; the dispute is one *de iure templi Dianae Limnatidis*,[1] and the land around it takes a very secondary place in his narrative, although in the official record of the Milesian award the land alone is referred to and the temple is not even mentioned.[2] A long feud between the Delphians and their neighbours of Amphissa centres around the possession of sacred precincts as well as round the frontier-line between the two states.[3] Similarly the contest between Melitea and Narthacium for a piece of land, part of which at least is described as χωρίον ἔρημον,[4] is rendered all the more important by the fact that the disputed territory contained, as we learn from the Narthacian account, several sanctuaries,[5] the possession of which would confer religious prestige and perhaps also material advantage on the holders. Somewhat analogous is the oft-recurring dispute between Delphi and certain of her neighbour-states regarding the extent and frontiers of the land sacred to Apollo, some of the episodes in which we learn from the celebrated bilingual inscription engraved on the south wall of the temple of Apollo.[6]

In other instances the question at issue was the possession of springs or streams, which might be of the utmost importance to the agricultural or pastoral section of the communities interested,[7] or of a harbour

[1] Tac. *Ann.* iv. 43.
[2] I, ll. 1, 11, 21, 53, 63, 67.
[3] XXII, l. 8 f.
[4] XXXIV, l. 20.
[5] XXXIV, ll. [44], 49. Cf. XXIII, XXV.
[6] XXVI.
[7] III, [VI], VII, XXV.

which might affect vitally the ability of the state to export its surplus produce and to import the commodities required for food or for manufacture.[1] Once more, the value of the land might arise from its strategic importance. The Rhodian arbitration between the Samians and the Prienians decided the possession of an area which, though it does not appear to have been extensive, contained a fortress of such strength and so situated that it was chosen as their base of operations by the Prienian democrats in their attack on the tyrant Hiero, who dominated their city,[2] and possibly the 'mountain', for the possession of which Erythrae and Hypata contended, gave to its possessors a strategic advantage over their neighbours.[3]

But though the most prolific source of international disputes was, as has been said, the contested ownership of territory, this formed by no means the sole ground of appeal to arbitration. The failure of a state to pay a sum of money due to another in virtue of some compact sometimes proved the occasion of such an appeal. Thucydides tells how the Eleans and Lepreates undertook a war in common, at the conclusion of which the Eleans resigned their claim to half the conquered land upon condition of the annual payment of one talent by the Lepreates to Olympian Zeus. The cessation of these payments soon after the outbreak of the

[1] [III], XII C, l. 5 (cf. A. Wilhelm, *Neue Beiträge zur griech. Inschriftenkunde* I (*Stzb. Wien*, clxvi. 1), p. 26 ff.), XXIX, l. 6. In LXVIII, l. 146 (cf. 128 f.) [τὸ ζήτημα τὸ κατ]ὰ τὸν εἴσπλουν figures.

[2] LXII, ll. 109 ff. [3] XXX.

Peloponnesian War led to a dispute, which was submitted to Spartan arbitration.[1] The refusal of the Spartans to pay a fine inflicted upon them by the Achaean League formed the immediate occasion of a reference to arbitration, although in that instance the real point at issue was the possession of the Sciritis and Aegytis, which were claimed both by Sparta and by Megalopolis.[2] A somewhat similar example is that in which two private citizens of Cos lent a sum of money to the Calymnian state, and after the lapse of a number of years the heirs of one of the lenders reclaimed from the state of Calymna their share of the loan, which was refused on the ground that payment had already been made. The dispute was referred to the Cnidians for decision.[3] At first sight this does not appear to be a genuine case of international arbitration, but it may best be treated as such inasmuch as the Coan state seems to have taken up the pecuniary claims of its citizens and made them its own.[4] In such disputes the court is called upon not to assess, but to award: in this aspect they are similar to the first class of territorial disputes already discussed.[5] But there are also financial cases which correspond to those in which a frontier-line calls for demarcation—those, namely, in which the task of the court is that of assessing the compensation due to a state which has suffered injury at the hands of another. Thus the Cleonaeans are called upon to assess the sums to be paid by the Arcadians and Stymphalians for damage done at Olympia during the Arcadian tenure of the

[1] Thuc. v. 31. [2] II. [3] LXXV, LXXVI.
[4] LXXV, ll. 12, 70 ff. [5] Page 54.

sacred precinct,[1] while the compensation to be paid to Argos for the attack made upon the city by Aratus in 240 B.C., upon the death of the tyrant Aristomachus, was fixed at thirty minas by a Mantinean tribunal. On the latter occasion, however, Aratus, though General of the Achaean League, appears to have acted on his own responsibility and consequently to have borne in person the penalty for his rash attempt.[2] An interesting example of the employment of the arbitral mode of settlement in a somewhat similar dispute is half revealed, half concealed, by a difficult and mutilated record, one copy of which has been discovered at Troezen[3] and a second at the Epidaurian Asclepieum.[4] It relates to a feud between Troezen and one of the neighbouring states, probably Hermione. It would seem[5] that there was a piece of border territory in dispute between the two states and that a controversy also centred around the rights of fishing in certain waters. The feud led to the suspension of friendly relations between the states, and one of them took advantage of this to raid the territory of the other, seizing houses, lands, and persons. Finally a compact was concluded by which the disputed territory and fisheries were acknowledged to be common property, all claims arising out of the predatory raids were cancelled, and provision was made for the due compensation of those who had suffered loss in the reprisals. In order, however, to give greater binding force to the compact, the two states agreed to send to Athens and request the

[1] XI. [2] Plut. *Arat.* 25. [3] XIII. [4] XIV.

[5] I follow the explanation given by A. Nikitsky, *Hermes*, xxxviii. 406 ff.

appointment of a tribunal, consisting of three members, to sanction the agreement and set up copies of it at Calaurea, Epidaurus, and Athens.[1] About a century later, when the Magnesian envoys charged the Prienians with having expelled the Magnesians from land which was theirs by right, the Prienians retorted by accusing the Magnesians of injuries for which they demanded suitable compensation. The inquiry was delegated to the Mylasians, who were instructed by the praetor, M. Aemilius, 'if the injuries have been done by the Magnesians, to assess them at whatever sum appears to be right and fair.'[2] A case between Phayttus and Ericinium apparently turns upon some question of sales and purchases, but its exact nature cannot be determined owing to the mutilated condition of the record.[3]

'Questions arising on the construction of Treaties' are recognized by modern international lawyers[4] as amongst the difficulties susceptible of arbitral settlement. In this view the Greeks shared, as we may infer from the references in the first book of Thucydides to the terms of the Thirty Years' Peace,[5] and although the repeated appeal to arbitration was then rejected time after time because the tension of national feelings was too great to acquiesce in any pacific settlement which might lower the national prestige, yet there must have been many occasions, both before and after the Peloponnesian War, on which arbitration prevented an outbreak of hostilities. Two examples from later Greek history may be

[1] XIII, ll. 15 ff.
[2] LXVI, l. 59 f. [3] XLII. [4] See above, p. 53.
[5] Thuc. i. 78. 4, 140. 2, 144. 2, 145, vii. 18. 2.

cited as showing that a belief in the efficacy of arbitral settlement of the disputes relating to the interpretation of treaties still survived. We possess the texts of treaties concluded by Antigonus Gonatas, who reigned from 278 to 239 B.C., with the Cretan cities of Eleutherna[1] and Hierapytna[2]: in both a clause is inserted in very similar, though not identical, terms, to the effect that, if the Cretans fail to send to Antigonus the stipulated aid 'or break the treaty in any way whatsoever', they shall pay a fine of ten thousand drachmas

ἐν τῆι συναιρεθείσηι πόλει ἐκκλήτωι.[3]

That is to say, if Antigonus charges either of the Cretan cities with infringement of the terms of the treaty, a state is to be chosen by mutual agreement to act as arbitrator, and, if the Cretans are declared guilty, they are to pay the stipulated fine. In these cases the arbitration extends merely to the question whether the treaty has, or has not, been infringed: with the assessment of damages it has nothing to do. In a treaty between Hierapytna and Priansus it is stipulated that, should any one contravene the articles of the agreement, whether magistrate or private citizen, an action may be brought before the common tribunal, the accuser estimating the amount of the damages; the accuser, if he secure a condemnation, is to receive a third of the sum thus assessed, while the remainder is paid to the aggrieved state.[4] This case, though not strictly an example of arbitration, forms a close parallel to arbitral procedure.

[1] XLVIII. [2] LV. [3] XLVIII, ll. 17 ff.; LV, ll. 22 ff.
[4] LIV, ll. 46 ff.

So far those cases alone have been considered in which the question at issue is a definite one—some specific act or abstention on the part of one of the states concerned. Sometimes, however, the dispute is of a more complex character, and it is a whole situation rather than an isolated act which the arbitrators are asked to consider. Such an appeal seems to have been the occasion of the award issued by the Argives about the middle of the fifth century B.C., in which the relations between Tylissus and Cnossus are regulated and set upon a clear footing.[1] The surviving portion of the record deals with the following amongst other questions: the calendar, the rights of property, seizure of land for debt, frontiers, the partition of booty, religious observances and the treatment of citizens of either state while visiting the other. The Argives avail themselves of the opportunity to make more precise in certain details the relations of the Tylissians and Cnossians to themselves. Somewhat similar circumstances are dealt with in the award issued by three Calydonian arbitrators.[2] Melitea and Perea had amalgamated to form a single state. But the process had raised certain difficulties: the union might not be permanent, and it was important to decide from the outset the position of each community in the event of a dissolution of the *συμπολιτεία*. Arbitration is therefore invoked to determine the frontiers of the two communities,[3] to prevent the alienation by the combined state of the public land of Perea,[4] and to decide the proportions in which the debts and financial obligations of the

[1] LI. [2] XXXV. [3] ll. 3–12. [4] ll. 12–16.

state should be distributed.[1] Other matters dealt with relate to the payments for local purposes to be made to the Pereans[2] and the trial of minor cases in Perea at regular assizes so long as the *συμπολιτεία* lasts.[3]

In other documents the arbitrators are explicitly directed to put an end to all differences outstanding between state and state, or claim to have succeeded in this task. Although the Pergamenes volunteered to arbitrate between Pitane and Mytilene only in the dispute over the possession of certain territory, they were invited to settle not this question alone but all questions at issue between the states, 'so that no charge or contention relating to any dispute should be left unsettled.'[4] Similarly the men of Latos and Olus submitted to the Cnossian state the arbitration

περὶ τῶν ἀμφιλλεγομένων αὐτοῖς
πόλι πορτὶ πόλιν πάντα περὶ πάντων.[5]

The most precise statement of the effect of an arbitral decision in such circumstances is found in the award issued by the Eretrian judges who had effected a settlement between Paros and Naxos.

> 'For the future private citizens shall not be allowed to bring any suit against the states arising from charges or injuries prior to this settlement; nor can any suit be any longer brought against the Naxian state by the Parian state, nor by the Naxian state against the Parians: nor shall any debt or charge or injury whatsoever be brought up by any private citizen against the states, nor any charge against a private citizen

[1] ll. 16–23.
[2] ll. 23–28. [3] ll. 28–31. [4] LIX, ll. 35 ff., 77 ff., 118 f.
[5] LIII, ll. 9 ff.; so also LII, l. 7 f. Cf. [XVIII, XIX,] LIV.

arising out of charges or injuries brought against the states prior to this settlement.' [1]

All disputes, that is, whether of state and state, or of state and individual, are simultaneously and finally settled by the terms of the agreement, which does not, however, affect the relations of citizen to citizen.

A number of examples have been recorded in which war, though not averted, was cut short by the acceptance of arbitration on the part of both the belligerent states. These may be considered here, although in the majority of such cases we learn little or nothing of the precise disputes which the arbitrators were called upon to adjust. The earliest example on record is that in which the Corinthians intervened to bring about a peaceful settlement between Thebes and Athens in 519 B.C., after war had been declared but before a pitched battle had been fought.[2] After the Spartan defeat at Leuctra in 371 B.C., the Thebans seem, according to the narrative of Polybius and Strabo, to have invited the Spartans to submit the causes of the war to Achaean arbitration.[3] In neither of these cases, however, was a lasting peace established, for in the former the Thebans flagrantly violated the conditions of the settlement by a sudden and treacherous attack upon the Athenian forces, while in the latter the Spartans seem to have refused the proposed reference to arbitration, just as, in 280 B.C., the Romans rejected the offer of Pyrrhus to act as arbitrator between the Romans and their Italiot enemies.[4] It is doubtful

[1] XLV B, ll. 4 ff. [2] Hdt. vi. 108.
[3] Polyb. ii. 39. 9; Strabo viii. 7, p. 384. [4] Plut. *Pyrrhus*, 16.

whether the intervention of Corinth and Corcyra to bring about peace between Hippocrates of Gela and the Syracusans was an instance of true arbitration at all,[1] and not rather one of mediation, and the same may be said of the attempts made by various Greek states, notably Aetolia and Athens, to restore peace between Demetrius Poliorcetes and the Rhodians, whom he was besieging in 304 B.C.[2] But arbitration was sometimes, if not invariably, successful. Callatis appears to have recovered peace by the efforts of Stratonax of Apollonia, though the exact circumstances are obscure,[3] and a treaty between Gortyn and Cnossus, which put an end to a war between these two states, was the direct result of an arbitration entrusted to Ptolemy Philopator of Egypt.[4]

In all the cases which we have hitherto examined, the disputes submitted to arbitral tribunals are actual and existent. Sometimes a single definite dispute is referred to the court for settlement,[5] sometimes the reference is more general, and covers 'all outstanding differences'.[6] There is one further step which may be taken,—a step which is often regarded as peculiar to the advanced civilization of the late nineteenth and of the twentieth century. This consists in referring to an arbitral court some or all disputes which may arise in the future, that is to say, in the conclusion of arbitration treaties. We must now examine the ancient counterparts of these modern compacts.

At the close of his account of the Ionian Revolt,

[1] Hdt. vii. 154. Cf. Thuc. vi. 5. 3.
[2] Plut. *Dem.* 22; Diod. xx. 98 f.
[3] LXXVII.
[4] XLIX A, ll. 27 ff. Cf. L, ll. 5 f., 10.
[5] See above, pp. 53 ff.
[6] See above, pp. 62 ff.

Herodotus tells of the measures taken by the Persians to secure the peace and good government of the Ionian cities and the proportional incidence of tribute.[1] In the forefront he places the action of Artaphernes in 'summoning envoys from the states and compelling the Ionians to make treaties with each other that they should submit their differences to legal settlement and should not harry and ravage each other'.[2] The words here employed—*ἵνα δωσίδικοι εἶεν*—probably have a wider reference than that to arbitral settlement of international disputes replacing the old system of reprisals. They probably include the conclusion of *σύμβολα*, providing the basis for the decision of disputes between individual citizens of different states, especially those arising out of commercial relations. Yet it is almost certain that the phrase also relates to the procedure to be followed in case of differences arising between state and state, and since anything of the nature of a codified international law was not as yet in existence, it is hard to see how such disputes could be settled save by reference to some kind of arbitral tribunal. The value of the experiment is attested by Herodotus, who characterizes it as one 'of great service to the Ionians'.

Somewhat similar attempts were made in the latter half of the fifth century B. C., though without external compulsion, to secure the permanence of treaties of peace or alliance by the insertion of a clause binding the contracting states to accept an arbitral decision of any disputes which might arise. There

[1] Hdt. vi. 42; R. von Scala, *Staatsverträge*, No. 44, p. 33.
[2] Hdt. vi. 42.

was certainly, as we have seen,[1] some stipulation of this nature in the Thirty Years' Peace between Athens and Sparta concluded in the winter of 446–5 B. C., and a similar clause occurs in the Year's Truce between the same two powers, compelling both states

> δίκας διδόναι κατὰ τὰ πάτρια, τὰ ἀμφίλογα δίκῃ διαλύοντας ἄνευ πολέμου.[2]

The same provision is also found, though in a slightly different form, in the Peace of Nicias (421 B.C.),

> ἢν δέ τι διάφορον ᾖ πρὸς ἀλλήλους, δικαίῳ χρήσθων καὶ ὅρκοις, καθ' ὅτι ἂν ξυνθῶνται,[3]

and again in the alliance of autumn 418 B.C. between Sparta and Argos, which refers to both peoples as

> ἐπὶ τοῖς ἴσοις καὶ ὁμοίοις δίκας διδόντας κατὰ πάτρια.[4]

A like condition is made in the case of any other Peloponnesian states which may join the alliance,[5] while it is further stipulated that disputes between states whether within or without the Peloponnese shall be similarly settled, whether relating to frontiers or to any other subject.[6]

In later times also the same method of dealing with contingent disputes is sometimes employed. Thus in the treaty between the four Lesbian cities of Mytilene, Methymna, Antissa, and Eresus, concluded in the earlier part of the second century B.C., provision seems to be made for dealing by award or agreement with any disputes which might arise between them.[7] Unfortunately the fragmentary nature of this treaty as preserved to us renders

[1] p. 60. [2] Thuc. iv. 118. 8: cf. § 6. [3] Thuc. v. 18. 4.
[4] Thuc. v. 79. 1. [5] Ibid. [6] Ibid. § 4. [7] LVIII, ll. 47 ff.

certainty unattainable, and even if the differences referred to are those between the several states and not those between their citizens, the possibility still remains that the passage may refer to existing disputes which are to be settled under the terms of this agreement. Nor can we appeal with absolute confidence even to the full and detailed treaty between Hierapytna and Priansus,[1] one clause of which deals with *τὰ ὕστερον ἐγγινόμενα ἀδικήματα*, for although on each occasion the two allied states are to determine in common the city to which the disputes are to be referred, yet here also the offences contemplated may have been those of individual citizens and not of the states as a whole.[2] But the treaty between Ephesus and Sardis affords a clear example of an arbitration clause.[3] The passage in question is so important that it may be quoted in full:

> 'And if either of the peoples act contrary to any of the stipulations laid down in this treaty, the people which is wronged may get justice before the state chosen by lot from amongst those which are selected jointly, the lot being cast by the state which mediates this treaty.'

It is true that in theory this clause does not cover all possible disputes which may arise between the two states, but only those based upon infringements, real or alleged, of the terms of the treaty to which the clause is appended. Yet inasmuch as the agreement deals with all outstanding differences between

[1] LIV, ll. 64 ff.

[2] The mention of the *σύμβολον* (l. 70) suggests this interpretation. See Ditt. *Syll.*[2] 227 note 4.

[3] LX, ll. 73 ff.

the contracting states and further lays down rules regulating their relations with a view to prevent the recurrence of such differences in the future, it is likely that at least the great majority of subsequent disputes would fall within the sphere of the treaty and so be subject to the rule regarding arbitral settlement.

The Greeks, then, although in times of tension and excitement they sometimes refused to acquiesce in an appeal to arbitral settlement as prescribed in their treaties, do not seem to have felt it necessary to exclude any specific category of disputes from the number of those which they regarded as susceptible of peaceful decision by an arbitral tribunal.

III

THE APPOINTMENT OF THE TRIBUNAL

THE customary preliminary to arbitration in an international dispute is the conclusion of an agreement (*compromissum*) between the two states involved that they will, upon certain stipulated conditions, invite and accept the decision of some external state or individual. Apart from this compact no arbitration is possible, and Greek history affords numerous instances of one state refusing to submit to arbitral decision its differences with another and so effectively blocking the road to this peaceful solution of the difficulty. The Spartans, according to Pausanias' account,[1] vouchsafed no answer to the offer made by the Messenians to submit to arbitration the feud which issued in the First Messenian War, and in 420 they treated with the same silent contempt the Argive proposal to settle the disputed question of the possession of the Cynuria by reference to some state or individual.[2] Several other examples of a similar nature are recorded about this same period. The Corinthians rejected the Corcyraean offer to settle by arbitration the question of the rights of both states over Epidamnus[3] in 435, while Pericles, addressing the Athenians at a time when the Peloponnesian War was seen to be inevitable, blamed the Spartans because,

[1] Paus. iv. 5, 7. [2] Thuc. v. 41. 2 : cf. 59. 5. [3] Thuc. i. 28.

though it was stipulated in the Thirty Years' Peace that differences between the two powers should be settled by appeal to arbitration, 'they have never themselves asked it, nor do they accept it when we make the proposal, but are eager to settle by war rather than by words the charges against us.'[1]

Such examples, however, seem to have been exceptional; under ordinary circumstances Greek feeling appears to have demanded that a state should prove its sincerity and its confidence in the justice of its claims by accepting the proposed arbitration, even in differences which had previously been settled in the same way, either once or even repeatedly. When the principle had been accepted by both sides, negotiation normally led to a speedy determination of the precise conditions.

But the agreement between the two disputants was not always brought about by the spontaneous action of one state in proposing, and the readiness of the other to accept, this solution. Sometimes it was the result of mediation on the part of a third state or of compulsion exercised by some superior power.

Of friendly intervention our sources, both literary and epigraphical, preserve numerous illustrations. The alliance of Plataea with Athens in 519 B.C. was followed by a Theban attack on the territory of the former; the Athenians went to the aid of their allies and a battle was imminent, when the Corinthians intervened and, being accepted by both sides as arbitrators, determined the frontier between Thebes

[1] Thuc. i. 140. For later instances see Diod. xiii. 43, 6; Paus. iii. 9, 11; Hegesippus, [Dem.] vii. 7, 36; Aeschines iii. 83; *Philippi Epistula*, [Dem.] xii. 11, 15, 17.

and Plataea and ordered the Thebans to grant full autonomy to those Boeotian communities which desired to hold aloof from the Boeotian Confederation under Theban hegemony.[1] Herodotus' language in his account of this episode leaves no doubt that he conceived of this as a true case of arbitration, but some events are more difficult to interpret. There is, for example, a well-known story of the intervention of Corinth and Corcyra in favour of the Syracusans, who had been worsted in battle by Hippocrates of Gela, and of the peace which was won by the Syracusan cession of Camarina,[2] while a yet more famous tradition tells of Simonides' intervention to bring about peace between Hiero of Syracuse and Thero of Acragas.[3] In both these cases it is best to see examples of mediation pure and simple, with no subsequent arbitration. We shall probably be right in taking the same view of the peace concluded between Demetrius Poliorcetes and the Rhodians in 304 B.C. Diodorus says that during the siege of Rhodes 'envoys came to Demetrius from the Athenians and from the other Greek states, over fifty in number and all asking to be allowed to bring about an understanding between the king and the Rhodians: but they were utterly unable to come to terms. . . . Now at that time the Confederation of the Aetolians sent envoys to bring about a settlement and the Rhodians made an agreement with Demetrius on these terms.'[4]

[1] Hdt. vi. 108.

[2] Hdt. vii. 154. Macan maintains that this may well have been a true arbitration.

[3] Schol. *ad* Pind. *Olymp.* ii. 29.

[4] Diod. xx. 98 f. Plut. *Dem.* 22 speaks of the Athenians as bringing about the agreement.

Bérard claims this as an instance of international arbitration, but there is no cogent evidence for this supposition and the envoys came not as arbitrators but as mediators. They could and did suggest the terms of the treaty, but they were not empowered to issue a binding award. Yet Greek inscriptions have preserved the memory of several occasions on which the mediation of a neutral state resulted in an agreement to submit the dispute to arbitral settlement. Pergamum sends an embassy to Pitane and to Mytilene to bring to these states a decree of the Pergamene people urging upon them the peaceful settlement of their differences,[1] and, when both return a favourable reply, an agreement is easily concluded between them formulating the conditions of the arbitration. A few years later, when there are numerous questions at issue between Latos and Olus, Cnossian envoys were sent to the two cities on two separate occasions to ask that the arbitration should be entrusted to Cnossus.[2] A third instance is that of Sardis and Ephesus;[3] a treaty terminating all existing disputes between the two states and providing for the settlement of future difficulties by arbitration[4] was concluded at the request of the Roman proconsul of Asia, Quintus Mucius Scaevola, who sent a delegate and a letter to each of the states advising them to terminate their feud. The treaty itself was ratified, thanks to the mediation of a third state, which, though not expressly named, is undoubtedly Pergamum.[5]

[1] LIX. [2] LII, ll. 4 ff.; LIII, ll. 1–4. [3] LX.

[4] See above, p. 68.

[5] Ditt. *O. G. I.* 437 note 22. Other examples of mediation are V, XXIX (?), XLIX. Cf. *S. G. D. I.* 5177, ll. 14 ff.

In the examples we have so far considered the intervention was entirely friendly in character, and there was no menace attached to it. But there were also cases in which one or both of the states submitting to arbitration did so not of free will but under compulsion, threatened at least if not exercised. Philip's letter to the Athenians, in which he urges them to consent to an arbitral decision of the conflicting claims to Halonnesus, refers to the fact that Athens had compelled Thasos and Maronea to have recourse to this means of settling the question of Stryme,[1] and Philip himself, after becoming master of Hellas, 'compelled both (the Spartans and the Messenians) to settle their disputes by arbitration, not appointing himself judge of the differences between them but setting up a common court chosen from all the Greeks.'[2] Possibly it was this tribunal which delegated to the Argives the task of inquiring into and deciding the dispute between Melos and Cimolus,[3] though it is more probable that the appointment was made by the Council of the Greeks (*συνέδριον τῶν Ἑλλήνων*) instituted by Philip at Corinth shortly after the battle of Chaeronea. The Leagues of later Greek history did their best to enforce upon their members the appeal to arbitration. Thus the Megarians decide a case between Epidaurus and Corinth 'in accordance with the command of the Achaeans' (*κατὰ τὸν αἶνον τὸν τῶν Ἀχαιῶν*),[4] and, when the Corinthians refuse to accept the verdict, it is once more under instructions from the Achaeans that a frontier-commission is sent to

[1] [Dem.] xii. 17. [2] Polyb. ix. 33 : cf. Strabo, viii. 4, p. 361.
[3] XLVII. [4] XV, l. 4.

carry out a careful demarcation of the boundary.[1] The Boeotian Confederation too intervened, probably by way of compulsory arbitration, to settle frontier-disputes between Lebadea and Coronea[2] and between Copae and Acraephia.[3] A treaty between the Aetolians and the Acarnanians, concluded shortly after 280 B. C., provides for the delimitation of the frontier between Stratus and Agra: if the two communities can arrive at some agreement, this is to be valid; otherwise the boundary is to be settled by a mixed commission of twenty members, ten Aetolians and ten Acarnanians, from which citizens of the two communities most directly interested are excluded.[4] In some cases, no doubt, the arbitration of the Roman state bore this character, but the appeal of Greek states to the Senate seems often to have been made on the initiative of the states themselves. Historians are all too prone to confuse the power to compel and the actual exercise of compulsion.

We have thus seen that the agreement of two states to submit their dispute to arbitration may arise either from the spontaneous action of the states themselves, or from the intervention of some friendly power, or from the compulsion brought to bear by some state or confederation possessing superior force. To the existence of such agreements we find references in numerous texts, literary and epigraphical, for without it the award has no validity. For example, in the record of the Argive verdict regarding the dispute between Melos and Cimolus we find the phrase

[1] XV, l. 10.
[2] XXI, l. 3.
[3] XVII, l. 3.
[4] XXVIII, ll. 6 ff.

ὁμολογησάντων Μαλίων καὶ Κιμωλίων ἐμμενὲν ἄι κα δικάσσαιεν τοὶ Ἀργεῖοι περὶ τᾶν νάσων.[1] Frequently this reference takes a less explicit form in such expressions as [ἀμφοτ]έρων ἐπιτρε[ψάντων],[2] ἑκατέρων θελόντων,[3] ἐπέτρεψαν (δίκας),[4] ἐπετράποντο,[5] αὐτῶν ἐπιχωρησάντων ἐξ ὁμολόγων,[6] [ὁμολογησάντων ἑ]κατέρων τ[ῶν πόλεων],[7] ἑκατέρων εὐδοκ[ούντων][8] or καθότι συνέθεντο πρὸς ἀλλήλους.[9] In some cases, however, the information afforded by the inscriptions is more precise and detailed. This is especially true of the agreements between Latos and Olus,[10] passed at common meetings of the citizens of the two states,[11] to refer all their disputes to Cnossian arbitration. The Cnossians are bound to pronounce judgement within six months of a specified day in one case[12] (a period afterwards extended by common consent to eighteen months),[13] and in the other within ten months;[14] they are also to take steps to record their award upon the five stelae which bear the inscription of the preliminary agreement, in two Cnossian sanctuaries, in those at Latos and Olus, and in the Apollo-temple at Delos.[15] The award is to have absolute and unconditional validity for all time, and the

[1] XLVII, ll. 5 ff. [2] II, l. 31; Hdt. vi. 108. [3] LXIV, l. 10 f.
[4] Polyb. ii. 39. 9; Strabo, viii. 7, p. 384; [Plut.] *Proverb.* 23.
[5] Hdt. v. 95. [6] XXXV, l. 2 f.
[7] XII A, l. 2, as restored by Fränkel; but the construction *ad sensum* is disquieting.
[8] XL, l. 28.
[9] LIX, l. 118. Cf. also XVIII, l. 3 f.; LXXXI, l. 3; LXXXII, l. 4 f.; Strabo, xiii. 38, p. 600; Plut. *Quaest. Graec.* 30.
[10] LII, LIII. [11] LII, l. 9; LIII, l. 4 f. [12] LIII, l. 20.
[13] LIII, ll. 56 ff. [14] LII, l. 11 f.
[15] LII, ll. 15 ff.; LIII, ll. 11 ff., 23 ff.

disputes which it settles are never to be renewed in any way or under any pretext whatsoever;[1] guarantees are to be provided by both cities for the due and proper fulfilment of the award, and any infraction of it is to be punished by a fine paid by the delinquent state to its rival.[2] Finally, any subsequent emendation of or addition to the agreement shall be valid if it receives the sanction of Latos, Olus, and Cnossus.[3]

A second extant example of an agreement of this nature is that between Phthiotic Thebes and Halus.[4] It is signed at the outset by a number of representatives, official and private, of the contracting states;[5] then the document contains a statement of the dispute to be decided, the name of the arbitrator selected by common consent, and a stipulation that his award shall be absolutely binding. The date of the arbitration, the steps to be taken to preserve a permanent and public record of the agreement and of the subsequent award, the fine to be imposed on either state which refuses to accept or to adhere to the decision, and the names of the two ξενοδόχοι appointed by each state complete the document.[6]

In a third instance the agreement, which here deals not with actual disputes of the present but with contingent difficulties of the future, forms part of a general treaty in which existing differences are ended and regulations laid down regarding the future relations of the two states, Sardis and Ephesus, and

[1] LII, ll. 13 ff.; LIII, ll. 28 ff., 38.

[2] LIII, ll. 32 ff. [3] LIII, l. 40 f. [4] XL, ll. 1–23.

[5] ll. 1–10. Apparently Thebes is represented by three tagi, an ex-tagus and eighteen citizens, Halus by two tagi and seven citizens.

[6] ll. 12–23.

of their citizens. The record deserves careful examination, presenting as it does a remarkable variation from the normal procedure followed in the choice of an arbitrating state. The passage in the treaty dealing with this subject runs as follows:[1]

> 'And if either of the peoples act contrary to any of the stipulations laid down in this treaty, the people which is wronged may get justice before the state chosen by lot from amongst those which are selected jointly, the lot being cast by the state which mediates this treaty.[2] The people which professes to be wronged shall announce the charge by means of an embassy to the people accused, and those who are appointed on either side shall meet for the trial, within thirty days from the time at which the accusers hand in the decree, before the mediating people.' These shall appoint by lot, within five further days, the people which is to arbitrate. Within sixty further days after the lot has been cast they shall come to the people thus appointed and shall complete the trial, bringing from their own states documents addressed to the state chosen by lot asking it to grant the court, and the award they shall carry out forthwith. But if any one fail to appear either before the mediating people or before the allotted state, judgement shall be given for him who does appear. This agreement shall remain in force for the Sardians and Ephesians for all time, and anything else which the two states may decide as being more suitable.'

The treaty then contains stipulations regarding its

[1] LX, ll. 73 ff. The opening lines have already been quoted (p. 68) in a different connexion.

[2] i. e., most probably, Pergamum: see above, p. 73 note 5.

publication at Ephesus, Sardis, and Pergamum, and the date at which it comes into force,[1] concluding with the names of the three Sardians and seven Ephesians who carried out the negotiations.[2]

To the detailed information which may be gained from these three agreements must be added a certain number of incidental references found in other arbitration-records. The character and size of the court were sometimes stipulated in the preliminary agreement,[3] though ordinarily the state chosen as arbiter was allowed a free hand in the appointment of the tribunal which was to represent it. The Magnesians in their report mention that they were elected

ἐν τῆι ὑφ' ἑκατέρων γενηθείσηι ὁμολόγωι ἡμέραι.[4]

Still more explicit are the terms upon which the Pitanaeans and Mytilenaeans agree to submit their dispute to a Pergamene tribunal.[5] The arbitrators must visit in person the territory in dispute, the hearing of the evidence must begin by a specified date and is to be careful and detailed, the award is to be made on oath and copies of it are to be handed in writing to each state. The award is to be absolutely binding and is to be recorded, together with any agreements which may be brought about by mediation, upon a stone stele. Finally, the demarcation of the frontier is to be made plain and unmistakable and the arbitrators are to settle not only the dispute regarding the boundary but all outstanding differences between the two cities involved.

The agreement, then, concluded by the two

[1] LX, ll. 85 ff. [2] ll. 92–96. [3] XLV A, l. 13 f.
[4] LVI, l. 25 f. Cf. 1, l. 46 f. [5] LIX, ll. 25 ff., 6 9 ff.

disputants normally deals with the following points: (1) the question at issue, (2) the choice of the arbitrator, and (3) the validity and finality of his award. It may further contain stipulations relating to (4) the time at which, or within which, the inquiry is to take place, (5) the size and character of the tribunal, (6) the way in which it is to arrive at, pronounce and record its verdict, (7) the place, time, and manner of publication, and (8) the penalties attending its contravention. Questions not dealt with in the agreement were settled either by the arbitrator or by the common consent of the delegates of the two litigant states. Thus the length of the speeches delivered by the Spartan and Messenian advocates before the Milesian court was restricted *καθότι καὶ αὐτοὶ εὐδόκησαν*,[1] the number of members composing the Eretrian tribunal is determined by the common consent of the representatives of Paros and Naxos,[2] while in another case the form in which the award is recorded is described in the words:

καθὼς οἱ προδικέοντες ὑπὲρ ἑκατέραν τᾶν πολίων σύμφωνοι γενόμενοι ἐκέλευσαν καταγράψαι τὸ κρίμα.[3]

One further point demands attention in this connexion. In a number of cases a dispute is referred to arbitration in a strikingly vague and general way. To quote but a single example, Maco of Larisa is asked to decide

[περὶ τᾶς ἀμφιλ]εγομένας χώρας αὐταῖς ποθ' ἑαυτὰς ταῖς πόλεσι.[4]

[1] I, l. 59. [2] XLV A, l. 13 f. [3] XXX A, ll. 5 ff.
[4] XL, l. 10 f. Cf. LXII, ll. 7 ff.

In such cases (and they form, so far as we can judge, the majority) the arbitrator is called upon to give an equitable decision in a dispute, the details of which will be laid before him by the delegates of the interested states. Sometimes the reference is far wider and more comprehensive, including a series of accusations,[1] or even all the disputes which exist between the two states,[2] while there are arbitration treaties, as we have already seen, providing for the settlement by this means of most or all contingent disputes of whatever nature.[3] In several instances, however, the question referred to the arbitrators is of a different character and deals merely with a matter of fact, not with one of law or of equity. The Senate, whether of its own motion or at the request of one of the states concerned, has taken cognizance of the dispute, has stated the law and has defined precisely the point at issue. Then, instead of inquiring into the facts of the case, it has deputed some other state to do this and to apply the Senatorial decision to the particular case. Three examples will illustrate this mode of procedure. The Spartans and Messenians referred their claims to the possession of the ager Dentheliates to the Senate, which passed a resolution

> [ὁπό]|τεροι ταύτην τὴν χώραν κατεῖχ[ον ὅτε Λεύ-κιος]| Μόμμιος ὕπατος ἢ ἀνθύπατος [ἐν ἐκείνηι τῆι ἐπαρ]|χείαι ἐγένετο, ὅπως οὗτοι οὕτ[ως κατέχωσιν],[4]

and delegated to the Milesian δῆμος the task of determining the question of fact. The Milesian

[1] e.g. LXVI, ll. 55 ff.
[2] LIII, ll. 9 ff. (see p. 63); LIV, ll. 57 ff.; LIX, ll. 35 ff., 77 ff.
[3] pp. 65 ff. [4] I, ll. 52 ff.

record therefore states that 'the case was brought forward in accordance with the letter of the aforesaid praetor and with the Senatus consultum',[1] and the award takes the form, not of a declaration that in equity the disputed territory belongs to the Messenians, but of the statement that 'the territory was in the possession of the Messenians when Lucius Mummius as consul or proconsul was in that province, and they therefore must hold it'.[2] Similarly the Magnesians try the dispute between Itanus and Hierapytna 'in accordance with the decree passed by the Senate and the letter sent by L. Calpurnius L. f. Piso, the consul',[3] and a passage is quoted from the *SC.* directing that, 'as each held this land and the island, which is the subject of dispute, on the day before the outbreak of the war which occasioned the dispatch of Servius Sulpicius and that body of envoys to Crete, so the arbitrators should decide that they should have, hold and reap the fruits of it'.[4] The Mylasians also have only a question of fact and not one of right to determine in a controversy between Magnesia and Priene regarding their territorial claims: in the *SC.* it is ordered that the arbitral court 'shall award the land to that one of the two states which it discovers to have been in possession of the land when it entered the friendship of the Roman people, and shall determine the frontier accordingly'.[5]

When the basis of arbitration had been thus found and formulated, the next step was to approach the

[1] ll. 49–51. [2] ll. 63–66. [3] LVI, l. 10 f.
[4] ll. 51 ff. [5] LXVI, ll. 53 ff.

proposed arbitrator, whether state or individual, with a request to undertake the task of decision upon the conditions laid down in the agreement. An embassy was therefore sent, comprising envoys of both the states, to bear a copy of the agreement to the selected arbitrator and to ask for a favourable response.[1] If the trial involved the dispatch of a body of judges from their native city, the embassy was sometimes accompanied by a δικασταγωγός,[2] whose function was to accompany the arbitrators on their journey and to make all the necessary arrangements for their safety and comfort. Arrived at their destination, the members of the court were lodged at the public expense, and special ξενοδόχοι were—in some cases, at least—appointed to entertain them.[3] The recent excavations at Sparta have brought to light four roof-tiles bearing the inscription[4]

κατάλυμα τῶν Ῥω-
μαίων καὶ δικαστᾶν

in characters of the second century B.C., proving that there at least a special building[5] was erected for the lodgement of Romans who visited the state in a public capacity and also of judges from other states, whether summoned to try suits between Spartan and Spartan or acting as arbitrators in international

[1] XVIII, ll. 8 ff.; LXII, l. 11. Cf. XXII, ll. 5 ff.; XLV A, ll. 9 ff.; LXVI, l. 5.

[2] XVIII, l. 8. Cf. Ditt. *O. G. I.* 487, l. 6; Le Bas-Waddington 358 a, l. 6.

[3] XL, l. 22 f. Cf. the δικαστοφύλακες at Magnesia, LXVI, l. 23.

[4] *B. S. A.* xiii. 39 ff.

[5] The date of this hostel is probably about 180 B.C.: see E. Ziebarth, *Rhein. Mus.* lxiv. 335 f.

disputes to which Sparta was a party. In one interesting example we find the arbitral court receiving from the state in favour of which it had given its award not merely the honours and privileges customarily granted, but also a safe-conduct on its homeward journey so far as was deemed advisable, in order to prevent any possibility of unpleasantness or molestation on the part of the state which had been worsted in the trial.[1]

It was, of course, within the power of the city or the individual to refuse the position of arbiter, and it may well be that there were occasions on which this step was actually taken. It is true that no mention of any such refusal is found in our sources,[2] but it must constantly be remembered that upon a question of this kind the argument from silence has very small weight. For the Greeks did not invariably or even normally commit their public records to stone, but only in those cases in which the desire was felt for special publicity combined with permanence,[3] and such a desire could rarely if ever be present regarding a frustrated attempt to secure a given person or city as arbitrator. There is, indeed, one inscription which tells of the refusal of a state to undertake the whole task requested of it. The stone was discovered in Carpathus, but it is uncertain whether the Carpathians were the arbitra-

[1] XXII, l. 32 f. Cf. XXIII, l. 14; *I. G.* xii. 5. 722, ll. 16 ff.; *R. É. G.* x. p. 284, l. 19.

[2] The refusal of Scipio Aemilianus in 151 B.C. to arbitrate between the Macedonian states (Polyb. xxxv. 4, 11) falls outside the scope of our present inquiry.

[3] For this whole question see A. Wilhelm's masterly essay, *Beiträge zur griech. Inschriftenkunde*, 229 ff.

tors or one of the contending parties. The extant portion of the text refers to a 'request from each of the two states that we should mediate and draw up a code of law', but goes on to record that the state refused this invitation and contented itself with acting as mediator and bringing about an agreement between the cities involved in the dispute.[1] In fact, the inscription does not make it plain that the arbitral function was exercised at all on this occasion.

In other records mention is made of the motives which prompted the acceptance of the position. The Magnesian people undertook the task at the request of the Romans

> 'in pursuance of its policy of absolute obedience to the written requests of the Romans, the common benefactors, and in memory of the fair and glorious deeds wrought by itself from the beginning throughout the generations to all Cretans, deeds which are recorded both by oracles of god[2] and by the consciousness of all mankind.'[3]

The Larisaeans sent judges to Acraephia and its neighbour-states

> 'in memory of the kinship which has existed from the beginning between them and the Acraephians and all Boeotians',[4]

while the Mylasian acceptance of the request made by Rome and by the contending cities, Magnesia and Priene, to act as arbitrators between them is described as an

[1] LXXXII. In XXXIX b, ll. 23 ff., as restored by Arvanitopoullos, the arbitrators refuse, for some unknown reason, to give a decision.

[2] Cf. *I. v. Magnesia*, 17, ll. 16 ff., 28 ff., 38 ff., 46 ff.

[3] LVI, ll. 22 ff.

[4] XVIII, l. 10 f.

> 'action in accordance with their characteristic generosity and their desire to follow the resolutions adopted by the Romans and ourselves (i.e. the Magnesians) and the letter addressed to them'.[1]

The fact is that the position of arbitrator was one of considerable honour and influence, so that no state or individual would lightly refuse the distinction when offered. This is borne out by the tone of the *SC.* under the terms of which the Mylasians were appointed. The Senate there directs the praetor, M. Aemilius, to give to Priene and Magnesia as arbitrator

> 'any free people (δῆμος) agreed upon by them; but if no agreement can be reached between them, M. Aemilius M. f. the praetor shall appoint a free people to deal with the case, as may seem good to him on considerations of public policy and his private belief.'[2]

From the phrases here employed we infer that, though it might be hard to secure the consent of both the litigant states to a nomination as arbitrator, the Senate anticipated no difficulty in inducing any free community to agree to act in that capacity.

What factors, then, determined the choice of an arbitrator? In very few cases is any answer to this question supplied by our ancient sources. The passage quoted above from the Magnesian report suggests that the Romans entrusted the final stage[3] of the arbitration between two Cretan cities to the Magnesians because, though they were far enough removed from the island to be free from local jealousy

[1] LXVI, ll. 6 ff. [2] LXVI, ll. 47 ff. [3] See p. 81 f.

and prejudice, they were united to Crete by a long and honourable record,[1] which was none the less strong a bond because perhaps it could not bear the test of a rigorous historical criticism. 'Kinship' is also the alleged reason why Acraephia and the states near it appealed to Larisa to arbitrate between them,[2] and 'kinship and friendship and a kindly disposition towards our state from the beginning' are mentioned to account for the intervention of Pergamum in a struggle of Pitane and the readiness of its citizens to entrust the settlement to a Pergamene court.[3] But the most explicit statement on this point which has come down to us from ancient times is to be found in Polybius' account of the immediate sequel of the battle of Leuctra:

> 'The Thebans and Lacedaemonians referred the matters in dispute to the arbitration of the Achaeans, and to them alone among the Greeks, not in consideration of their power, for at that time they ranked almost lowest of the Greeks in that respect, but rather of their good faith and their moral excellence in general. For beyond question this is the opinion of them which was held at that time by the whole world.'[4]

This statement, made by one who was himself a patriotic Achaean, has been called in question by Grote[5] and others, while the continuance of the war between Thebes and Sparta proves that arbitration, if resorted to, was ineffectual. But Bérard[6] has

[1] Cf. Ditt. *Syll.*[2] 929, note 13, and Wilhelm's restoration of XLIX A, l. 22 f. in *Stzb. Wien*, clxv, 6, p. 54. [2] XVIII, l. 7.
[3] LIX, l. 2 f. Cf. ll. 11, 16, 21, 23, 60 f., 97 f.; Paus. iv. 5. 2.
[4] Polyb. ii. 39. 9. Cf. J. P. Mahaffy, *Greek Life and Thought*, p. 583. [5] Pt. ii, ch. 78. [6] Bérard, *Arb.* p. 29.

strongly supported the statement made by Strabo,[1] who omits all reference to the Spartans and merely says that

ἐπέτρεψαν Θηβαῖοι τούτοις τὴν δίαιταν,

a phrase which may be interpreted as meaning that the Thebans offered to submit the matter to Achaean arbitration, but the proposal was declined by the Spartans.[2]

There are several instances known to us in which a friendly state which intervened was itself accepted as arbitrator,[3] though this step was not always taken; an example to the contrary is the choice of Ptolemy Philopator as arbitrator by Gortyn and Cnossus, when the instigation to a peaceful settlement had come from the Magnesians, who sent two envoys to the belligerent states urging them to conclude peace.[4] A cognate, though not precisely similar, example is that in which the Sardians and Ephesians agree that in the future differences between their two states shall be submitted to the arbitration of a third state to be chosen by lot from a select list by Pergamum, which had mediated the settlement of past disputes.[5]

But with the exception of the cases just discussed, our sources tell us nothing, or next to nothing, of the motives which in each several case led to the choice of the arbitrator employed. The search after motives

[1] viii. 7, p. 384.

[2] The fact that Strabo is clearly following Polybius as his source in this passage and his use of the aorist instead of the imperfect seem to me to militate against the interpretation advocated by Bérard, which may, nevertheless, be true though lacking Strabo's support.

[3] See above, pp. 71 ff. [4] XLIX. [5] LX, ll. 73 ff.

is always a perilous undertaking, and in the majority of instances we lack that detailed knowledge of contemporary history which alone could give a firm basis for an examination and criticism of the motives at work. In spite, however, of this confession of ignorance, we may note one or two salient features of the cases of which some record has survived.

During the century which followed the battle of Chaeronea, disputes between Greek states were frequently referred for arbitration to Philip or Alexander or one of the Diadochi. Philip, indeed, though determined to do all in his power to allay the feuds of his Hellenic subjects, in order to make use of them in his wider and more ambitious schemes of empire, apparently hesitated to assume openly the rôle of arbitrator, and Polybius tells us that, though in the common interest he compelled the Spartans and Messenians to settle their differences by arbitration, 'he did not appoint himself as judge in the questions at issue, but set up a common tribunal taken from all the Greeks.'[1] To this he delegated the task of deciding, and thus the award is referred to as Philip's by the Spartans and Messenians before the Roman Senate.[2] Alexander and his successors, however, settled such questions in person, as, for example, the long-standing feud between Samos and Priene, which was submitted successively to Alexander,[3] Philip Arrhidaeus,[4] Antigonus,[5] Lysimachus,[6] Antiochus Theos,[7] and Antiochus the

[1] Polyb. ix. 33. [2] Tac. *Ann.* iv. 43.
[3] LXII, l. 146 (reference doubtful). [4] l. 137 (doubtful).
[5] l. 141 (doubtful). [6] LXI, LXII, ll. 125 ff. [7] LXII, ll. 132 ff.

general of Ptolemy III Euergetes.[1] Similarly Antigonus Gonatas was invoked by the Spartans and Messenians,[2] and Ptolemy Philopator was appointed arbitrator in the war between Gortyn and Cnossus,[3] but the attempt of Pyrrhus of Epirus to induce the Romans to accept him as arbitrator between themselves and the Italiots with whom they were at war proved fruitless.[4] But this practice of appealing to a crowned head was not confined to the Hellenistic period. At the close of the seventh century B.C. the Athenians and the Mytilenaeans, after an indecisive struggle for the possession of Sigeum in the Troad, agreed to submit the dispute to Periander, tyrant of Corinth, whose award was, at least temporarily, accepted by both parties,[5] and Pausanias, son of Cleombrotus and regent of Sparta, is referred to by Plutarch,[6] in a passage of which the historical accuracy is at least open to grave doubt, as hearing the case between Delos and Athens.[7] The dispute between Melitea and Narthacium was settled, at least temporarily, by a certain Medeus,[8] who has usually been identified with the dynast of Larisa who was at war with Lycophron of Pherae about 385 B.C.;[9] but the identity, though not unlikely, cannot be proved, and it has been suggested[10] that this Medeus was the friend of Alexander the Great and subse-

[1] ll. 153 ff. [2] Tac. *Ann.* iv. 43. [3] XLIX, L.

[4] Plut. *Pyrrh.* 16.

[5] Hdt. v. 95; Strabo, xiii. 38, p. 600; Diog. Laert. i. 74. Cf. Arist. *Rhet.* i. 15. 13, p. 1375 b.

[6] *Apophth. Lac.* 230.

[7] Cf. Bérard, *Arb.* p. 26; Sonne, *Arb.* p. 27 f.

[8] XXXIV, l. 27. [9] Diod. xiv. 82.

[10] Ditt. *Syll.*[3] 307 note 16. I still incline to the other view.

quently of Antigonus and Demetrius Poliorcetes, whose name is familiar to us from literature,[1] from a list of Delphian *ναοποιοί*,[2] and from an Athenian decree passed in his honour.[3] Nor did the appeal to the individual arbitrator of high rank cease with the merging of Hellenistic Greece into the Roman Empire. Nothing is said of the precise form in which L. Mummius, Julius Caesar, Marcus Antonius, and Atidius Geminus dealt with the dispute between Sparta and Messenia,[4] but the probability is that they did not do so in virtue of the irresistible power of the Roman legions but in response to an appeal from the states themselves, and that these are thus true examples of arbitration, although the arbitrators held high rank and office in the Roman Empire.[5]

It has sometimes been argued that this selection of crowned heads or powerful officials as arbitrators is but one of the manifestations of that fulsome and cringing flattery of those in power which defaces the records of later Greek history. To deny this *in toto* would not be easy in face of the picture of Hellenistic Greece presented by the historians and by inscriptions, but to accept it as the sole, or even as the chief, explanation betrays shallowness of judgement. For Alexander, or one of the Diadochi, possessed certain advantages as arbitrator which could not be combined in one of humbler station,

[1] Arrian, vii. 24. 4; Diod. xx. 50. 3; Plut. *Dem.* 19; C. Müller, *Script. rerum Alex. Magni*, pp. 127 ff., etc.

[2] Ditt. *Syll.*[3] 140, l. 138.

[3] Ditt. *Syll.*[3] 173.

[4] Tac. *Ann.* iv. 43.

[5] For Mummius' decision see Ditt. *Syll.*[3] 314 note 1.

and these more than outweigh the contention that there is no more intrinsic probability that a king will judge wisely than a state or a private citizen. For, in the first place, the very fact that he was a king, all of whose actions were carefully watched and recorded, might be expected to make him feel keenly the sense of responsibility, while, at the same time, being sole judge, he could not shift the odium arising from an unjust award to the shoulders of colleagues. Secondly, he was deeply interested in the satisfactory and lasting settlement of the dispute, for it affected closely the peace and tranquillity of his empire, and yet his interest was not of such a nature as to lead him into a prejudiced judgement; Alexander's realm, for example, included within it the territories of Samos and Priene, and its size and wealth were wholly unaffected by the precise position of the frontier-line which divided them. And further, his very imperial position gave his awards the prestige they would otherwise have lacked, and made it possible to enforce their observance, thus supplying a positive sanction which otherwise was lacking to the arbitral judgement.

But the individuals to whom appeal was thus made were not in all cases kings, tyrants, or high officials. Themistocles is said to have been invited to adjudicate between Corinth and Corcyra,[1] no doubt in virtue of his great fame for cleverness and sagacity. Pyttalus, a famous athlete, appears in Pausanias' narrative as settling a dispute between Arcadians and Eleans,[2] and an Athenian, Bunas or Bulias, is mentioned in the explanation of an Alex-

[1] Plut. *Them.* 24.

[2] Paus. vi. 16. 8.

andrian proverb by the pseudo-Plutarch as arbitrating between Eleans and Callionaei.[1] These examples, it is true, are but poorly attested, and in each of them mediation and not arbitration may be the historical basis of the narrative.[2] The Medeus who arbitrated between Melitea and Narthacium may, as has been pointed out above, be either prince or private individual, while of the work and position of Stratonax of Apollonia[3] and Lanthes of Assus[4] we know too little to be able to speak with any confidence. But there is one case, clear and undoubted, of appeal to a private citizen: Phthiotic Thebes and Halus submit their frontier-dispute to the decision not of the Larisaean state but of a prominent man of Larisa, Maco the son of Omphalion,[5] who is mentioned in two other Thessalian inscriptions of the period.[6] In such cases we have no reason to doubt that the arbitrator selected was entrusted with his responsible and sometimes onerous task merely because of the name he had won for skill and fairness, and the confidence to which such a reputation gave rise.

But if the appeal to a single arbitrator is frequent

[1] [Plut.] *Proverb. Alex.* 23. See Sonne, *Arb.* vii, p. 11. Καλλιωναίους may be a corruption for Κυλληναίους or for Καλυδωνίους.

[2] So also with the alleged arbitration of Pantarces between the Eleans and the Achaeans (Paus. vi. 15. 2).

[3] LXXVII.

[4] LXXII. Bérard (*Arb.* p. 93) speaks confidently of Lanthes (whom he wrongly calls Laanthes, ibid. p. 71) as sole judge between Mylasa and Alabanda: but the evidence is quite insufficient.

[5] XL. [6] *I. G.* ix. 2. 215 (Thaumaci), 578 (Larisa).

in Greek history, the appeal to a council or a state is still more common. There is an interesting story recorded by Pausanias that, just before the outbreak of their first war with Sparta, the Messenians offered to submit the points in dispute to the arbitration either of 'the Argives in the Amphictiony' or of the Athenian Areopagus.[1] The historical difficulties of this passage,[2] however, make the authenticity of the account doubtful, and in any case the proposal, if it was ever made, fell to the ground. The Delphian Amphictiones tried the famous case between Athens and Delos, when Hyperides appeared as an advocate on the side of the former[3] and determined, at the request of a Roman magistrate, which of two previous boundary-delimitations of the sacred land of Apollo should be maintained;[4] but these are the only occasions upon which we hear of that much-discussed gathering acting as tribunal in a suit of this nature.[5] Even more surprising is it to discover

[1] Paus. iv. 5. 2, 7.

[2] See the commentaries ad loc. of Frazer and of Hitzig and Blümner.

[3] Dem. xviii. 134; Hyperides, *frg.* 67–75 (ed. Kenyon); *Vit. X. Orat.* 850 A.

[4] XXVI, Col. B l. 28–D l. 6.

[5] Cf. [Plut.] *Parall.* 306, 3, where the 'battle of the six hundred champions' is said to have been fought at the command of the Amphictiones; but Hdt. i. 82 (cf. Paus. ii. 38. 5) knows nothing of any Amphictionic intervention, and his authority is decisive. Nor do we know whether the pseudo-Plutarch had the Delphian Amphictiones in mind. In IV there is perhaps a reference to the *κοινὸν τῶν Λακεδαιμονίων* acting as arbitrator, but the reading and interpretation are doubtful. The mention of the Thessalian council in XXXIV, l. 27 f., also depends upon a mistaken restoration: see Ditt. *Syll.*[3] 307 note 17.

how insignificant a part is played in our records of Greek interstate arbitration by the Delphian oracle or city. The Corcyraeans, involved in a feud with Corinth regarding the rights of both states in Epidamnus, propose to submit the questions in dispute to any Peloponnesian city, and add—apparently as a kind of afterthought—that they will agree to accept the Delphian oracle as arbitrator.[1] Apart from this proposal, which was rejected, the oracle makes but one appearance in the extant annals of Greek arbitration as taking an active part, though the central position and acknowledged supremacy of the shrine make it a suitable place for the record of awards.[2] Clazomenae and Cyme laid before the judgement of the Pythia the disputed question of the ownership of Leuce and its Apollo-temple, which lay between them but nearer to Cyme. The answer is a characteristic one and goes far to explain the almost entire absence of Delphi from the list of arbitrators. No board of judges is appointed, no inquiry is held, no witnesses are heard. The Pythia awards the possession of Leuce to that state 'which should be the first to sacrifice at Leuce; but each must start out from their own territory at sunrise on the same day, which should be fixed by common agreement'.[3] And we are not surprised to find in the sequel that Clazomenae, which in consequence

[1] Thuc. i. 28. Phillipson's statement (*International Law and Custom*, ii. 133) that 'the oracle at Delphi was often consulted in the case of interstatal disputes, and its arbitral decisions were almost invariably accepted' rests on insufficient evidence.

[2] XXXVI–XXXVIII, XI. Cf. XXII. [3] Diod. xv. 18

of this award won the coveted position, did so by a trick.

The normal appeal of the Greek states, during the days of Hellenic freedom and even in Hellenistic times, was to another Greek city. The choice, which was made afresh each time the occasion arose, was influenced by various considerations, amongst which 'kinship' seems to have played an important part. As was only natural, the states selected were usually those which had considerable standing and prestige in the Greek world, such as Mantinea,[1] Megara,[2] Argos,[3] Corinth,[4] Chalcis,[5] Pergamum,[6] Rhodes,[7] Paros,[8] Cnossus,[9] or others in a similar position; we seldom hear of quite unimportant cities acting in this capacity.[10] On the other hand, high principle and friendly feeling were requisite in the arbitrating state even more than power or wealth as such, and we hear only twice or three times of Sparta acting as arbiter,[11] of Athens perhaps only twice.[12] Geographical considerations too seem to have determined to some extent the choice of the

[1] Plut. *Arat.* 25.

[2] XV, XX. Cf. Plut. *Apophth. Lacon.* 215 C. [3] XLVII, LI.

[4] Hdt. vi. 108; cf. vii. 154. [5] XXX. [6] LIX.

[7] XXII, LVII, LXII. [8] Plut. *Quaest. Graec.* 30; LVII.

[9] LII, LIII.

[10] XI, XII? (Cleonae); XXXI (Phayttus?); possibly also III, if the Tenos there referred to is the Laconian town of that name mentioned by Steph. Byz., as Bérard and Raeder think, and not the better known island state, as seems to me more probable.

[11] Plut. *Solon*, 10; Aelian, *Var. Hist.* vii. 19, &c.; Thuc. v. 31; XXXII (?).

[12] XIII, XIV, XXV. Possibly we should add Plut. *Dem.* 22: see above, p. 72 f. Cf., however, Xen. *Memor.* iii. 5. 12.

arbitrating state as well as the size of the tribunal.[1] Usually the distance of the contending states from that which is represented by the arbitral court is no very great one; the Megarians settle a dispute between Corinth and Epidaurus,[2] Cleonae is called in to put an end to a frontier quarrel between Epidaurus and Hermione,[3] Pergamum arbitrates between Pitane and Mytilene,[4] Sardis between Priene and Miletus.[5] These examples are typical and normal, although exceptions are not infrequent, dictated by special circumstances, as when the Argives arbitrate between their two colonies of Cnossus and Tylissus in Crete,[6] or Magnesia is requested to settle a dispute between two Cretan states, with which her relations had been intimate and of long standing.[7] Occasionally, in order to obviate the possibility of a prejudiced verdict, the trial was entrusted to several states in common and the tribunal was composed of a number of panels: Achaeans and Sicyonians are found acting together in this way,[8] and examples are known to us in which the court contained representatives of three,[9] four,[10] or even more different states.[11]

The appeal was always to Greeks, with a single exception,[12] down to the second century B.C., when

[1] See below, p. 101. [2] XV.

[3] XII, as interpreted by Wilhelm, *Stzb. Wien*, clxvi, 1, pp. 27 ff.

[4] LIX. [5] LXIX. [6] LI. [7] LVI. [8] XVI.

[9] XXXIV, ll. 55 ff. (Samos, Colophon, Magnesia); Plut. *Quaest. Graec.* 30 (Samos, Paros, Erythrae).

[10] LVII (Rhodes, Delos, Paros, and another).

[11] LXX (Erythrae, Chios, Clazomenae, Lebedus, Ephesus, and at least one other).

[12] XXXIV, l. 28 f. (οἱ περὶ Πύλλον Μακεδόνες).

the Roman power began to overshadow the East and to put down first one and then another of the successors of Alexander. To this new power, 'barbarian' though it was, the Greeks turned for the settlement of their disputes, inspired by the same motives which in the past had led them to entrust their feuds to the arbitration of the Diadochi. But so completely did the Roman Senate dominate the provincial and foreign policy of the state, or rather, so entirely did the Senate fill the horizon for those who looked from the East towards Rome, that the reference to Roman arbitration is always mentioned as a reference to the Senate, and there is never any allusion to the Roman people.

The question here arises to what extent the delegation of arbitral authority was recognized in the Greek world. It seems to have been expected that an individual, whether king or magistrate or private citizen, who accepted the position of arbiter, should himself exercise its functions, and in nearly every case known to us this course appears to have been followed, though in some disputes at least Philip put in place of himself a mixed Greek tribunal,[1] possibly delegating to it his own powers. The whole body of Amphictiones might sit as a single arbitral court,[2] but that the Roman Senate should ordinarily act as such was out of the question; it was too far distant from the scene of the dispute to be able accurately to ascertain all the facts, and its business was too great and pressing to allow it to make a detailed inquiry in each individual case. It therefore followed one of two courses. Either it laid down the law of

[1] Polyb. ix. 33.

[2] p. 94.

the case and delegated to some free community[1] the task of adjudicating on the facts and issuing an award accordingly,[2] or it dispatched envoys, singly or in bodies,[3] to decide such disputes, the verdict in each case being subject to Senatorial ratification. These, in their turn, seem to have claimed the right to delegate their functions, for Pausanias tells how Sulpicius Gallus, sent by the Senate to terminate a frontier quarrel between Sparta and Argos,[4]

αὐτὸς μέν σφισιν ἀπηξίωσε δικαστὴς καταστῆναι, Καλλικράτει δὲ ἁπάσης τῆς Ἑλλάδος ἀνδρὶ ἀλάστορι ἐπιτρέπει τὴν κρίσιν,[5]

and his indignation is aroused, apparently, by the arrogance of the Roman legatus and the character of his deputy rather than by any breach of law or usage on the part of either.

When we turn to those instances in which a whole state is appointed as arbiter, it is plain that delegation is imperatively necessary. Normally the arbitrating state was free to determine the size and composition of the court to which its duties should be delegated, though occasionally the envoys of a mediating state were themselves accepted as arbitrators by the contending parties. Delegation in such cases was a practical necessity and appears to have been an invariable rule. Just as in Athens and

[1] LXVI, ll. 47 ff. [2] I, LVI, LXVI.

[3] e. g. Polyb. xxiii. 15, xxxi. 9. 7; Livy xxxviii. 39.

[4] Paus. vii. 11. 1. In spite of Polyb. xxxi. 9, it is not necessary to alter the Ἀργείοις of Pausanias into Ἀρκάσιν or Μεγαλοπολίταις, as is done by Bérard (*Arb.* p. 13), J. G. Frazer (*Pausanias's Description of Greece*, ad loc.), and others. See Ditt. *Syll.*[2] 304 note 1. [5] Paus. vii. 11. 2.

elsewhere the law-courts represented the whole people and no appeal was possible from their verdicts because these were delivered in the name of the δῆμος, so also arbitral tribunals exercise a delegated authority which is regarded as that of the whole community. Some scholars, indeed, have regarded as an exception to this rule the award pronounced by the Argives in the dispute between Melos and Cimolus, the extant record of which opens with the words [1]

ἔκρινε ὁ δᾶμος ὁ τῶν Ἀργείων.

But such a hypothesis, besides running counter to all analogy, is wholly unnecessary. The award, arrived at by an arbitral court, is published in the name and with the sanction of the Argive people, just as, at the present day, when an arbitration is entrusted to a reigning monarch, the award will be issued in his name though actually framed by the lawyers to whom the inquiry and decision has been deputed. The Messenians can thus refer to

ἁ κρίσις ἁ γεγενημένα ἐπὶ τοῦ δάμου τοῦ Μιλησίων,[2]

although the Milesians had entrusted the trial of the case to a court of six hundred members.[3] At the utmost we may suppose that the award was formally ratified by the Argive Assembly, though the silence of the later and more detailed records of arbitral procedure make even this view improbable.

The courts appointed to represent arbitrating states varied remarkably in size, but as a general

[1] XLVII, l. 2 f. Cf. LXVII. [2] I, ll. 19 ff.
[3] ll. 47-49.

rule we find one of two principles followed. Either the court is regarded as a small committee of experts, or it consists of a large number of members representing the 'common sense' of the whole people. The former plan involves, in addition to the other advantages of expert decision, a minimum of expense and difficulty when it is necessary for the members of the court to visit disputed frontiers far from their homes, and sometimes to examine minutely a considerable length of actual boundary-line. The latter plan, on the other hand, embodied the democratic principle that though for executive purposes a small body may be most efficient, yet the fairest decisions are those of 'the many', representing the collective intelligence of the community and cancelling out individual peculiarities and idiosyncrasies.[1] It does seem, although the character of our evidence makes dogmatic assertion hazardous, that the practical considerations of cost and transport were important factors in determining the size of the arbitral court. It is true that, if the accepted restoration of the record of the Eretrian arbitrators is correct, the 301 judges composing the court were conveyed to Delos;[2] but this at least is clear, that of the four largest courts known to us, two[3] certainly, and a third[4] probably, held their sessions in their native cities, while of the small courts the great majority, if not all, had to travel more or less widely in the fulfilment of their functions.

These two principles are somewhat unequally

[1] Cf. Arist. *Pol.* iii. 1281 a 39–b 21.
[2] XLV B, l. 21.
[3] I, LXXV.
[4] XLI.

represented amongst the courts regarding which we gain precise information from our ancient sources. The largest is that of six hundred members, appointed by the Milesians to try the dispute between Sparta and Messenia on behalf of the Roman Senate; this court is expressly described as 'the largest permitted by law'.[1] This is followed by the Larisaean tribunal of 334,[2] an Eretrian court of 301 judges,[3] the Cnidian court of 204,[4] the Megarian of 151,[5] and one of 101 representing an unnamed state.[6] There is a manifest desire to appoint an odd number, in order to prevent the contingency of an equal number of votes being given on each side, while on the other hand that danger was not sufficiently pressing to make an odd number absolutely necessary in every case.

More numerous than these 'popular' courts are small bodies of expert arbitrators. Holleaux[7] and Perdrizet[8] speak of three as the normal number of members composing an arbitral tribunal, but it would be more correct to say that this number appears more frequently than any other in the extant records. Eight examples are known[9] of a court of this size, as compared with six[10] composed of five members, while the Rhodians, invited to arbitrate between Delphi and Amphissa, dispatched a body of nine citizens to represent their state.[11] Here again there is an

[1] I, l. 48 f.
[2] XLI, l. 14 f.
[3] XLV A, l. 13.
[4] LXXV, ll. 83 ff.
[5] XV, l. 5 f.
[6] II, l. 37 f.
[7] *B. C. H.* xiv. 39.
[8] *B. C. H.* xxiv. 76.
[9] V, XIII, XVIII, XIX, XX, XXIV, XXXV, XLIV.
[10] II, ll. 2 ff., XXX, XXXVIII, LIX, LXII; Plut. *Solon*, 10.
[11] XXII, ll. 11, 21 ff.

obvious attempt to avoid the possibility of an equal division of the votes.[1]

Four instances remain for consideration, lying midway between the two classes discussed. Thirty-one Megarians are chosen to demarcate the frontier between Corinth and Epidaurus,[2] but these are clearly regarded as being a committee of the whole court of 151; they are appointed from amongst its members, and the reduction in number is due to the demands of practical convenience, for the delimitation no doubt called for a considerable amount of time and a careful examination of the frontier-line. The court which tried the dispute between Miletus and Myus[3] consisted of at least thirty members, but was probably divided into a number of panels, each giving a single vote determined by the majority of its five members.[4] A boundary dispute between an Acarnanian and an Aetolian town was settled by a mixed commission of twenty, half of whom were taken from each of the two leagues; from this body, however, all citizens of the two communities directly interested were excluded.[5] Finally, a court of eighteen

[1] W. L. Westermann (*Classical Journal*, ii. 204) speaks of two appearances of a court of two members. One is probably *C. I. G.* 2152 *b*, which has been shown by Wilhelm to refer to the settlement of internal differences in Alabanda and not to arbitration between Alexandria in the Troad and some other state (Ἐφ. Ἀρχ. 1901. 147 ff.): I cannot discover the second. In *I. G.* ix. 2. 1106 the δικασταί are five or, more probably, four in number (see A. Wilhelm, *Hermes*, xliv. 53 ff.); but the suits there referred to are almost certainly those between citizens and not between their respective states.

[2] XV, l. 9.

[3] LXX.

[4] See below, p. 130 f.

[5] XXVIII, ll. 6–9.

Magnesians is appointed to decide the questions at issue between Itanus and Hierapytna.[1]

Of the method by which these tribunals were appointed the inscriptions tell us but little. The large courts, where they did not comprise all those who were eligible,[2] were sometimes, perhaps always, chosen by the truly democratic method of the lot from the whole citizen body. This is certainly true of the Milesian court, which

ἀπ[ε]κληρώθη ἐκ παντὸς τοῦ δήμου

at a plenary (κυρία) meeting of the assembly convened in the Theatre.[3] How the proud Spartiates must have winced to find this motley crowd of Milesian democrats sitting in judgement on the dispute between themselves and those who for centuries had been their slaves! In the Eretrian account also the word κληροῦν is specifically employed of the appointment of the arbitral court,[4] but otherwise there is no mention of the procedure followed in such cases. On the other hand, we may safely take it for granted that the small tribunals were filled by election, and all the available evidence points in that direction. We hear of one case in which those who were responsible for the appointment

ὤμοσ[αν αἱρήσεσθαι ἐκ πά](ν)των ἀριστίνδαν,[5]

a phrase which must refer to moral character rather than to social position.[6] Usually no restriction seems

[1] LVI, ll. 2–9. [2] As is perhaps the case in XLI.

[3] I, ll. 45 ff. [4] XLV A, l. 12. [5] II, l. 33.

[6] Ditt. *Syll.*[2] 304 note 9. The phrase ἄνδρες αἱρετοὶ πλουτίνδα καὶ ἀριστίνδα used in XXIX, l. 9, probably refers to the arbitrators, though Bérard (*Arb.* p. 94) seems to regard it as a description of those who supported the litigant states at the trial.

to have been placed on the people's choice. That the election was made by the people may be regarded as certain, even apart from incidental indications of the fact, as when the Rhodian judges refer to themselves as *αἱρεθέντες ὑπὸ τοῦ δάμου*,[1] or the Magnesian arbitrators describe themselves as *κεχειροτονημένοι ὑπὸ τοῦ δήμου*.[2] But the desire to make the court fully representative of the state appears in the composition of the Megarian court of 151, appointed we know not how, which is made up of fifty members of each of the Dorian tribes Hylleis and Dymanes and fifty-one Pamphyli; the committee of thirty-one, which was subsequently commissioned, was similarly composed of ten Hylleis, ten Dymanes and eleven Pamphyli.[3]

Of distinctions in position and powers between members of the same court very few hints are given, and it is probable that in most cases no such distinction existed. An inscription discovered in Corcyra, however, calls one of a body of three arbitrators *μνάμων*, and the other two *συνδικασταί*, indicating that one of the three was president of the court and ranked, in dignity if not in power, above his two colleagues.[4] Possibly the title *νεωκόρος τῆς Ἀρτέμιδος τῆς Λευκοφρυνηνῆς* appended to the name of the first of the eighteen Magnesian judges implies that the holder enjoyed some sort of presidency, and we may

[1] LXII, l. 6.

[2] LVI, l. 9. Cf. XXII, l. 20; XXXV, l. 1 f.; XXXVII, l. 5 (*αἱρεθέντες*); LVI, l. 25 (*ἡ αἵρεσις τοῦ δικαστηρίου*); LXVI, l. 9 (*ἐχειροτόνησαν*).

[3] XV, ll. 32 ff.

[4] XLIV, ll. 10 ff. I have no hesitation in following Dittenberger (*I. G.* ix. 1. 689) as against Wachsmuth and Blass, who hold that the arbitrators here are only two in number.

ask ourselves whether, in the event of an equal division of the votes, he may perhaps have been entitled to give a casting vote.[1] The existence of a president seems also to be implied in the description of two boards of arbitrators as *οἱ περὶ Πύλλον Μακεδόνες*[2] and *Παυσανίας Θεσσαλὸς καὶ οἱ μετ' αὐτοῦ*.[3]

In three records a secretary is mentioned,[4] and it is probable that in most cases such an official accompanied the arbitral court. That they were ordinarily debarred from voting seems almost certain; yet the fact that they receive precisely the same honours as the members of the court at the hands of states which have benefited by arbitral awards shows that in social and civic position there is no difference between the judges and their secretary.[5]

[1] LVI, l. 3. [2] XXXIV, l. 28 f. [3] XXVI, Col. B, l. 29 f.
[4] XVIII, XIX, XX.
[5] Cf. Pauly-Wissowa, *Real-Encyclopädie*, *s.v.* *γραμματεῖς*, vii. 1741 ff.

IV

THE PROCEDURE OF THE TRIBUNAL

THE court, constituted in the way we have described, set about the fulfilment of its task as speedily as possible. The Magnesian arbitrators in their report pride themselves upon the promptness of their decision: no sooner had they been elected judges than 'straightway . . . . we heard the statements of the contending parties'.[1] The alacrity of this beginning was matched by the extraordinary rapidity with which the case was heard. 'We gave them', the report continues, 'not only the available time of the day, but also the greater part of the night.' So it would seem that this complicated and important suit was disposed of within twenty-four hours! It must be remembered, however, that this was the second occasion within a very few years on which the Magnesians were appointed as arbitrators in this dispute,[2] so that at least the outlines of the case were probably already well known to most, if not to all, of the judges, and also that the representatives of the two contending states had already reached Magnesia, and had brought with them all the witnesses and documents to which they intended to appeal. Moreover, the precise question to be decided was formulated in a Roman *SC.*;[3] the arbitrators were asked

[1] LVI, ll. 26 ff. [2] ll. 9, 26, 50 f. Cf. Ditt. *Syll.*[3] 929 note 5.
[3] ll. 51 ff. See above, p. 81 f.

to settle a point not of law but of fact, and were instructed to give their award in favour of that state which had been in possession of the land and the island in dispute on the eve of the Cretan war which had led to the dispatch of Servius Sulpicius Galba and his fellow legati to Crete. Thus the task of the Magnesians was greatly simplified, and it is possible that their award, although so rapidly reached, was neither hasty nor ill-considered.

But such promptitude is quite exceptional. Ordinarily time had to be allowed sufficient for the collection of the evidence, for a visit of the tribunal to the territory in dispute, if that was thought advisable, and for the proper preparation of the case. Sometimes the actual hearing occupied several days, as we learn from a Magnesian decree passed in honour of the Mylasian judges who gave an award in favour of Magnesia after devoting several days to hearing the evidence.[1] The possibility of a long delay is suggested by phrases which appear in several arbitration decrees or treaties. Thus the agreement under which Maco of Larisa is requested to act as arbitrator fixes the month in which the inquiry is to take place,[2] and similarly the Roman praetor, in directing the Mylasians to hear a case for the Senate, determines the date on which the trial is to commence and that on which the verdict must be given.[3] Again, the arbitration-treaty between Latos and Olus contains the stipulation that judgement shall be given within ten months,[4] while the second treaty at

[1] LXVI, l. 10. Cf. LXV, l. 7. [2] XL, l. 12 f.
[3] LXVI, l. 62 f. [4] LII, l. 12.

first allows only six months,[1] but subsequently extends the time by other twelve months.[2] Indeed, it must sometimes have been the case that no limit was prescribed to the period within which the award must be given. The pseudo-Plutarch explains the proverbial saying 'Bunas judges' by the story that Bunas was an Athenian arbitrator who, knowing that the states which appealed to him had pledged themselves to suspend hostilities until his verdict should be pronounced, kept on postponing the delivery of his award until he died,[3]—a tale which, though it may lack historical warrant, is at least suggestive. The court was doubtless usually free to determine when and how to go to work, though sometimes it received instructions regarding these points, embodied in a decree of the state which it represented. An example of such a decree has survived,[4] regulating the conduct of the suit brought by Cos against Calymna, and, as it prescribes the exact day on which the depositions of those witnesses who cannot be present are to be taken[5] and the time within which these must be sent to Cnidus,[6] there can be little doubt that the initial portion of the decree, now lost, contained a clause enacting that the trial should begin on a stated day.

A second question which must be decided was where the trial should take place. In territorial disputes it was often of the utmost importance that the arbitrators should themselves visit the area in dispute. This was especially necessary when the

[1] LIII, l. 20. [2] LIII, l. 56.
[3] [Plut.] *Proverb.* 23. See Sonne, *Arb.* vii, p. 11. [4] LXXV.
[5] l. 26 f. [6] ll. 36, 40.

question related to the exact position of a frontier-line; in such cases the only possible substitute for an authoritative survey, the correctness of which was acknowledged by both the litigant states, was autopsy on the part of the judges. When, on the other hand, the boundary of the contested territory was plain and indisputable, as in the case of the islets claimed by Melos and Cimolus, or of the island of Leuce, to which Itanus and Hierapytna laid claim, a personal visit of the arbitrators was not imperatively called for. Intermediate between these two classes of cases is that in which the disputed territory is contiguous to that of both the claimant states, but its area is well defined and the only question at issue is which of the contending parties is its rightful possessor. There are, as we should expect, frequent references in inscriptions to the inspection of disputed territories or frontiers by the members of an arbitral court,[1] usually accompanied by a mention of those with whom they visited them. Thus the Delphian Amphictiones prefix to their record of the boundaries of Apollo's land a list of the delegates of the various states interested who were present at the demarcation: some of these are described as envoys (*πρεσβευταί*), while others, who held official positions in their states, are entitled *ἄρχοντες*.[2] Again, Maco of Larisa, chosen to arbitrate between Phthiotic Thebes and Halus, refers to himself as 'having made a circuit of the whole territory in the company of the

[1] XV, ll. 6, 10; XVI, l. 14; XXXVII, l. 10; XXXVIII, ll. 9 f., 19 f.; XL, l. 26 f.; XLIV, l. 15 f.; LIX, l. 28; LXII, l. 22; LXV, l. 7; LXVI, ll. 9, 69; LXX, l. 22.

[2] XXVI, Col. C, ll. 11–20.

representatives of both states'.[1] This, of course, is the usual procedure, but occasionally the arbitrators visit the territory under the guidance of the envoys of only one of the contending states, as was the case with the Aetolians whose award runs:

'We decided that the lands round which the Meliteans conducted us belong to the Meliteans,'[2]

or with the Cassandreans, who visited the disputed boundary with the Meliteans and Chalaeans,[3] who on this occasion made a common claim against the Peumatii; the same judges afterwards inspected another frontier under the guidance of the Meliteans and Pereans, the latter of whom were one party to a dispute in which the former had previously pronounced an arbitral decision.[4]

Usually the arbitrators had not very far to come, and yet there were occasions when this visit to the disputed area must have entailed no little difficulty, especially if the court was a large one. For three Greeks from the Adriatic coast, one from Apollonia, one from Dyrrhachium, and the third from Corcyra, to visit in person the boundaries of Mondaea and Azorus, which lay near the Macedonian frontier, the one in Thessaly, the other in Perrhaebia, must have been a considerable undertaking,[5] nor can it have been altogether easy for five judges from Cassandrea, the older Potidaea, to visit Melitea, in Achaea Phthiotis, and its neighbour-states.[6] Still more difficult, perhaps, though the distance to be traversed was so much smaller, was the task of showing 151

[1] XL, l. 26 f. Cf. XLIV, l. 15 f.
[2] XXXVII, l. 9 f., reading [ἐκρίνα](μ)εν.
[3] XXXVIII, l. 9 f.
[4] XXXVIII, l. 19 f.
[5] XLIV.
[6] XXXVIII.

Megarian arbitrators the intricacies of the frontier-dispute between Corinth and Epidaurus, and it is not surprising that, when a more careful and accurate demarcation of the boundary was demanded, the Megarians thought it advisable to reduce the number of the commission to thirty-one.[1] Sometimes, however, no attempt was made by the arbitral court to visit the territory the ownership of which was in question. This was the case, so far as we can judge, when the appeal was made to some tyrant or king, and it was equally so when the Roman Senate was appointed to arbitrate, though that body seems usually to have deputed to others the task of ascertaining the actual facts, whether by a personal visit or otherwise, and to have contented itself with laying down the law of a case or confirming a previous decision. Two instances may be noted in which a Greek court of arbitration in a territorial dispute failed to visit the land in question. The six hundred Milesians gave their award between Sparta and Messene apparently without leaving their city ;[2] in fact, the difficulty of transporting so large a number to the ager Dentheliates on the slopes of Mount Taygetus and of finding accommodation for them there would have been very considerable. Similarly the Magnesians decided the quarrel between Itanus and Hierapytna in their native state,[3] aided by maps and plans of the land under discussion.[4] It is important to bear in mind that in both these cases the Roman Senate had clearly formulated the

[1] XV. [2] I. [3] LVI.

[4] LVI, l. 71 *διὰ τῶν ἐπιδεικνυμένων ἡμῖν χ[ωρο]γραφιῶν εὐσύνοπτον ἦν.*

question to be decided by the arbitrators,[1] and that this was one rather of history than of geography, and so rendered a personal inspection of the ground less imperative.

In the two cases just mentioned the whole hearing took place in the arbitrating city. We may infer this with certainty from the Milesian account, while the Magnesian record is perfectly explicit:[2] after taking the oath at the altar of Artemis Leucophryene

> *καθίσαντες ἐν τῶι ἱερῶι τῆς Ἀρτέμιδος τῆς Λευκοφρυηνῆς διηκούσαμεν τῶν διαφερομένων.*

It is interesting to compare with this account the procedure of the Pergamene tribunal.[3] The statements of the two contending cities were first heard, probably either in Pitane or in Mytilene; then a visit was paid to the territory in dispute, after which the court adjourned to Pergamum and the concluding stage of the trial was held there, in the temple of the Dioscuri.[4] The Rhodian arbitrators, on the other hand, followed a different course:

> 'having given them a hearing both at Rhodes in the temple of Dionysus and on the territory in dispute, to which the representatives of both parties conducted us, and at the fortress named Carium, and at Ephesus in the temple of Artemis, we gave judgement according to what we had seen . . .'[5]

With these exceptions we know of no instances in

[1] I, ll. 52 ff.; LVI, ll. 51 ff. In LXVIII, l. 127, a case is heard, probably before an arbitral court, *ἐν τῶι θεάτρωι τῶι Ἐρυθραίων*, but here also the issue seems to have been defined by the Senate (l. 147).

[2] LVI, l. 28 f. [3] LIX, ll. 110 ff. See Ditt. *O. G. I.* 335 note 42.

[4] LIX, ll. 121 ff. [5] LXII, ll. 20 ff.

which an arbitral court, consisting of a number of individuals representative of a state, conducted the hearing in its own city rather than on the disputed land, in one of the litigant cities or on neutral ground. The Mylasians heard the evidence of the Magnesians and Prienians

παραχρῆμά τε ἐπὶ τῶν τόπων [καὶ μετὰ ταῦτα ἐν] τῶι ἱερῶι τοῦ Ἀπόλλωνος τοῦ ἐμ Μυοῦντι,[1]

and there are frequent references to judges as dispatched (ἀποσταλέντες) by their states for purposes of international arbitration as well as for the settlement of internal difficulties in other cities.[2] In many of these instances, however, the members of the court may have returned home before formulating and publishing their awards.[3]

The time and place of the trial, then, were determined sometimes by a decree of the arbitral community, sometimes by the states which invoked its intervention,[4] sometimes by the tribunal itself, in view of the special circumstances and requirements of the individual case. The procedure to be followed was regulated in the same manner, probably conforming as closely as possible to the ordinary rules obtaining in the civil and criminal courts, with the working of which the arbitrators were no doubt familiar.

[1] LXVI, l. 10 f. The dispute between Aetolia and two towns on the confines of Acarnania and Epirus may have been decided at Pagae (XXIX; see p. 21 f.). No. XLV raises a difficulty: A 14 ff. suggests that the court sat at Eretria, B l. 21 (as restored) refers to a visit to Delos.

[2] Cf. XXXI, l. 2 f. (ἀπεσταλμένοι); XVIII, l. 12 (ἐξαπέστειλαν); XIII, l. 16 f., XVIII, l. 15 (παραγενόμενοι).

[3] See below, p. 152 f. [4] pp. 76 ff.

The inquiry was frequently conducted, as we have seen, in a sanctuary, and the members of the court took an oath, as was the universal practice in Greek courts of law. Sometimes this oath preceded the hearing of the evidence: this was certainly the case at Magnesia, where the tribunal reports that

> *παραχρῆμα ἀναβάντες ἐπὶ τὸν βωμὸν τῆς Ἀρτέμιδος τῆς Λευκοφρυηνῆς σφαγιασθέντος ἱερείου ὠμόσαμεν καθ' ἱερῶν,*[1]

and the same custom seems to have been followed at Cnidus[2] and in the arbitral trial between Sparta and the Achaeans.[3] But in one case[4] the tenor of the narrative leaves no doubt that the oath was taken after the hearing of the evidence and immediately preceded the giving of the votes, and the same order is suggested by the phrases *ποήσονται τὴν κρίσιν μεθ' ὅρκου*[5] and *ἐνηνέχθαι τὰς ψήφους κρυφαίως μεθ' ὅρκου.*[6] The exact formula of this oath is preserved in a decree passed by the Cnidians:[7]

> 'By Zeus and Lycian Apollo and Earth, I will judge the case to which the contesting parties have sworn in accordance with the justest judgement, and I will not judge according to a witness if he does not seem to be bearing true witness; nor have I received gifts from any one on account of this trial, neither I myself nor any one else, man or woman, on my behalf, in any way or under any pretext whatsoever. If I swear truly, may it be well with me, if falsely the reverse.'

[1] LVI, l. 26 f. [2] LXXV, ll. 2 ff. [3] II, l. 14.
[4] LIX, l. 122. [5] LIX, ll. 30, 72.
[6] XLI, l. 13 f.; cf. ll. 5, 20 f. XVIII, l. 35, also refers to the oath taken by arbitrators.
[7] LXXV, ll. 4–9.

Similarly the oath taken by the Delphian Amphictiones before deciding a number of questions, of which one involved international relations, is preserved almost entire and runs as follows:[1]

> 'Every question in the judgement relating to the moneys and boundaries of Apollo I will decide as is true to the best of my belief, nor will I in any wise give false judgements for the sake of favour or friendship or enmity; and the sentence passed in accordance with the judgement I will enforce to the best of my power with all possible speed, and I will make just restoration to the god. Nor will I receive gifts, neither I myself nor any one else on my behalf, nor will I give aught of the common moneys to any one nor receive it myself. These things I will thus do. And if I swear truly may I have many blessings, but if I swear falsely may Themis and Pythian Apollo and Leto and Artemis and Hestia and eternal fire and all gods and goddesses take from me salvation by a most dreadful doom, may they permit me myself and my race to enjoy neither children nor crops nor fruits nor property, and may they cast me forth in my lifetime from the possessions which now I have, if I shall swear falsely.'

So important was this oath considered that the official record, deposited at Megalopolis, of an award between Sparta and Megalopolis contained not only the formula of the oath, but also the names of those Spartan envoys who were present when it was administered to the judges.[2]

The two contending states were represented at the trial by their duly accredited delegates. These were entrusted with the task of accompanying the arbitrators on their visit, if such was necessary, to the

[1] XXVI, Col. B ll. 10–16. [2] II, l. 38.

disputed territory, bringing before the court all the evidence in favour of their side, and pleading their case as effectively as possible.[1] In almost every instance these would naturally be citizens of the state they represented, but this rule was not invariable. Anticyra, Ambryssus, and Delphi availed themselves in common of the services of a single Delphian advocate to plead their cause before the court of the Amphictiones in 117 B. C.[2] A certain Nysander of Larisa went to Rome as one of the envoys from Pteleum, having undertaken to champion its interests in what appears to have been an arbitral inquiry before the Senate,[3] and an Athenian is found amongst the representatives of Delphi,[4] while of the three advocates who appeared on behalf of Calymna before the Cnidian board of arbitrators the first mentioned is a Milesian, probably one who had made a name for himself in the conduct of such cases, and his two colleagues are Calymnians.[5] An even more remarkable example is that in which Euboean arbitrators, summoned to Geronthrae to settle civil suits there, make such an impression that they are asked to represent the state in an arbitration case then pending.[6] Further, these representatives of the state, even if they were all citizens, were not all entrusted with the same function. This is brought out clearly

[1] The envoys who accompanied the Delphian Amphictiones on their tour of demarcation were far more numerous than the three who originally pleaded the cause of the states involved in the dispute. See XXVI, Col. B ll. 29–32, C ll. 11–20.

[2] XXVI, Col. B ll. 30 ff. [3] XXXIII. [4] XXIII.

[5] LXXV, ll. 88 ff.

[6] IV, ll. 16 ff.; but this interpretation of the inscription is not certain.

in a Magnesian decree in honour of its delegates at a recent trial, where *οἱ δικαιολογηθέντες - - -*, those who made the speeches before the tribunal, are sharply distinguished[1] from *οἱ ἔγδικοι*, twelve in number,[2] who probably 'watched the case' in the Magnesian interest: most likely the same distinction underlies the phrase used by the Magnesians, this time themselves acting as arbitrators, that they took the oath

> *παρόντων τῶν τε διαδικαζομένων ἀφ' ἑκατέρας πόλεως καὶ τῶν συνπαρόντων αὐτοῖς*,[3]

though in all probability the latter part of the clause includes also the secretary of the delegates. This functionary, though only twice named in the records of Greek international arbitration,[4] must have accompanied the state representatives on all, or nearly all, occasions, and was probably a citizen of high standing. There is no reason to believe that the number of representatives appearing on each side in an arbitral case was equal or was in any way limited; in fact, we know of a boundary-delimitation at which Megalopolis was represented by nine of its citizens and Thuria by only three,[5] and of another in which ten Samian *ἔγδικοι*, including a secretary, took part and between fourteen and eighteen Prienians.[6] On the other hand, considerations of convenience sometimes dictated that a limit be put to the number of

[1] LXVI, l. 22 f.; cf. l. 15.

[2] ll. 93–106. Elsewhere, however, the *ἔκδικοι* are the actual orators.

[3] LVI, l. 27 f.

[4] LXXV, l. 21 f.; LXV, l. 18 (restored). IV, l. 20, is not to the point.

[5] VIII, ll. 5 ff. LX, ll. 92 ff., is not relevant here.

[6] LXV, ll. 15 ff.

those who actually pleaded. The Cnidians allowed each of the contending parties to bring four advocates (*συνάγοροι*),[1] but they did not make full use of the permission, the Calymnians bringing only three while the other side was represented by a single advocate.[2] Sparta and Messene, on the contrary, relied each upon a single orator to plead its cause before the Milesian court.[3]

That these representatives were elected and not chosen by lot is not ordinarily stated just because the fact is self-evident. On such critical occasions the state must rely upon the highest legal and oratorical ability at its disposal. Yet the term 'elected' appears more than once,[4] and there is a famous case in Athenian history of which we have full information. The dispute between Delos and Athens over the control and administration of the Delian sanctuary was to be submitted to the arbitration of the Amphictiones, and Aeschines was elected by the Assembly as an Attic advocate (*σύνδικος*); the ratification of the choice was, however, left to the Areopagus, which unanimously deposed Aeschines and elected Hyperides in his place.[5] In the arbitration suit between Athens and Megara for the possession of the island of Salamis, Solon was appointed to represent the Attic cause, and various stories were current in later times of the way in which his sagacity, or perhaps we should rather say his unscrupulousness, gained a favourable verdict for his state.[6] The Megalopolitan repre-

[1] LXXV, l. 18 f. [2] ll. 86 ff. [3] I, ll. 60 ff.

[4] LXII, l. 14; LXVI, l. 93; LXIX, l. 14; LXVIII, l. 144 f.; and see the following note.

[5] Dem. xviii. 134 f.; *Vit. X Orat.* 850 A.

[6] See pp. 54, 134, 150 f.

sentatives on the occasion of a boundary-delimitation between Megalopolis and two of its neighbours[1] included at least three prominent men—Diophanes, son of Diaeus,[2] Thearidas, son of Lycortas,[3] and the historian Polybius, perhaps a younger brother of Thearidas.

The character of the evidence adduced and the arguments employed by these advocates will be discussed in the following chapter: here, however, we must review the information afforded by inscriptions regarding the manner in which the hearing of the case was conducted.

We may first look at the record of the dispute between Cos and Calymna, which was settled by a Cnidian arbitral tribunal.[4] The question at issue has already been described,[5] but reference must be made to the form in which the evidence was brought before the court. Full details are given in the decree, of which the greater part has survived, passed by the Cnidians to signify their acceptance of the arbitral office and to determine the procedure of the 204 citizens who composed the tribunal. The extant portion begins with the oath which is to be administered to the judges,[6] and then proceeds:[7]

> 'The decrees and the challenges (*πρόκλησις*), and any other document which is brought, if required, from the public archives, shall be laid before the court by each of the contestants, sealed with the public seal of their respective states, in accordance with the decrees which those states may pass, and

[1] VIII. [2] See Dittenberger's commentary, *Olympia* V, p. 90.
[3] Polyb. xxxii. 17. 1; xxxviii. 8. 1, 11. [4] LXXV.
[5] p. 58. [6] p. 115. [7] LXXV, ll. 10 ff.

shall be handed to the generals,[1] and the generals shall open and lay before the court all the documents submitted by both the contesting parties. And each of the parties shall also hand in its depositions before the hearing of the case. The first speech on each side in the trial shall not exceed eighteen *choes*, nor the second speech ten *choes*. Each side may bring four advocates, and the advocates may appear also as witnesses. The secretary brought by each of the parties shall read out the decrees and the challenges and the indictment of the case and any other document which may be brought from the public archives and the depositions, and the time thus used shall not be reckoned. The witness who is able to attend in person shall give his witness in person before the court, while those of the witnesses who are unable to appear before the court shall give their witness in absence before the presidents (*ἐπὶ τῶν προστατᾶν*)[2] in the respective cities on the 24th of Batromius according to the Calymnian, of Caphisius according to the Coan, calendar, in the presence of the contesting parties, should they desire to be present. The witnesses shall swear the customary oath to their depositions, namely, that their witness is true and that they are unable to attend the court in person, and the presidents shall seal with the public seal the depositions taken before them, and any of the contesting parties who so desires shall add his own seal. Copies of these depositions shall at once be handed to the contesting parties by the presidents. The presidents shall send copies of all the depositions witnessed in Cos, some sealed with the public seal and others unsealed, to the presidents in Calymna within twenty days from the date at which they are

[1] See Ditt. *Syll.*[2] 512 note 9.

[2] The presidents, that is, of the Assembly.

witnessed, and similarly the presidents in Calymna shall send copies of all the depositions witnessed before them, some sealed with the public seal and others unsealed, to the presidents in Cos within twenty days from the date at which they are witnessed, and the presidents shall carry out with regard to the depositions all the other steps required of the presidents in Cos. Those of the Calymnians who visit Cos to hear the depositions shall have their safety guaranteed in Cos by Philinus.[1] Further, the generals shall allow each side to examine the witnesses individually after the first speeches in the trial have been delivered; and each side shall examine the witnesses in all matters pertinent to the case, but none others, and the generals shall compel the contending advocates to answer a question put by the witness if he fails to understand the question addressed to him and asks an explanation of it from the advocates. And if the speeches are not finished on both sides when the time expires, they shall speak until the water runs out. When the speeches have been concluded, the generals shall at once take the votes.'

The instructions given in the foregoing decree are so clear and precise that they require but little comment. That they are typical rather than exceptional may be inferred from the striking resemblance they bear in many respects to the procedure of the Attic courts,[2] although no doubt the course followed by other arbitral tribunals will have differed in details from that prescribed for the Cnidian board. The proceedings open with speeches, limited in duration, delivered on both sides;[3] into the course

[1] Philinus was the guardian of the Coan claimants, and appeared as sole advocate on their side at the trial (LXXV, l. 86 f.).

[2] See Ditt. *Syll.*[3] 512 note 1.

[3] LXXV, ll. 17 ff.

of these are introduced the evidences adduced by the advocates in support of their statements—depositions of witnesses, whether present or absent, decrees or other public documents, duly attested by the seal of state, and read aloud to the court by the secretary. The clock is stopped during the reading of these documents, for it is only the actual speech of the orator on which a time-limit is imposed. Then comes an interval for the cross-examination of such witnesses as are present, and at its conclusion the advocates are again allowed to address the court, this time more briefly than before. No further speaking is permitted, and the court at once proceeds to find its verdict, which is apparently given without any 'retirement of the jury' or any combined consideration of what that verdict should be.

The same precautions are taken in the Attic courts to guard against the danger of excessive length in the advocates' speeches, and they reappear in the Milesian trial of the dispute between Sparta and Messene, in which each of the advocates was limited, by common consent,[1] to fifteen Milesian *metretae* for his first speech and five for his second.[2]

When the evidence and the arguments brought forward by each side had been heard and examined, the court might at once proceed to vote. Such, we have seen, is the course prescribed for the Cnidian tribunal:

συντελε[σθέντων δὲ τῶν λόγ]-
ων διδόντω τοὶ στρατα[γοὶ] τὰς ψάφου[ς αὐτίκα μάλα].[3]

But in some cases another method was tried. Instead of pronouncing a judicial verdict, the

[1] I, l. 59. [2] I, ll. 56 ff. [3] LXXV, l. 51 f.

arbitrators attempted to settle the dispute by mediation, that is, by inducing both the parties concerned to agree to an equitable adjustment. In this way the state which had made out the stronger claim would gain all that for which it was contending, whilst the other would be spared the blow to its prestige involved in an adverse decision, carried perhaps by an overwhelming majority. This practice, together with the reason which led to its adoption, is most clearly described by the Magnesian arbitrators in the case of Itanus and Hierapytna,[1] while another arbitral court has similarly left it on record that it postponed for a considerable time the writing of its award

ἕνεκεν τοῦ χρόνον ἱκα[νὸν]
δοθ[ῆ]μεν εἰς σύλλυσιν τοῖς δια[φερ]ομέ[ν]οις.[2]

But we are not to regard these as isolated instances. The same procedure is involved in the decree of the Pitanaeans expressing their acceptance of Pergamene arbitration in their dispute with Mytilene. The arbitrators, it is enacted, shall give their verdict on oath,

> 'and their judgements (*τὰ κριθέντα*) shall be valid and unalterable. Likewise also they shall inscribe upon a stele the agreements made (*τὰ συνλυθέντα*), if accepted by both sides.'[3]

Again, the Rhodian arbitrators refer to the request made by the Samians and Prienians to the Rhodian people that they will appoint men

οἵτινες κρινοῦντι καὶ ὁρι-
ξοῦντι καὶ ἀποφανοῦνται ἢ συλλυσοῦντι,[4]

[1] LVI, ll. 31 ff.
[2] II, l. 12 f.
[3] LIX, ll. 31 ff.; cf. ll. 73 f., 100 f.
[4] LXII, l. 12 f.

in which passage the first three verbs refer to the duties of a board of arbitrators in the strict sense of the word, while the last (joined to the others not by *καί*, but by the adversative *ἤ*) refers to the act of a mediator. A similar instance, though belonging to a much earlier date, is afforded by the Cleonaean award in the suit between the Olympian temple authorities and the Arcadians and Stymphalians:[1] the general heading, *καταδίκαι κα[ὶ ὁμολογίαι]*, refers to the two classes of assessments, those in which the Cleonaeans had exercised the arbitral authority entrusted to them, and those in which the two parties agreed upon an assessment and thus rendered arbitral intervention needless. These examples will serve to illustrate a practice which we must believe to have been very widespread.[2] The reason is plain. To mediate is the function of a friend, to arbitrate that of a judge, and mediation, where it was possible, was a pleasanter and less invidious solution of the difficulty than the award of an arbitral court, and one, moreover, less calculated to wound the susceptibilities of the party which had the weaker case. Thus we find the Pergamene tribunal already referred to expressing its determination

> *μ[ὴ φι]λέχ[θρως ἀλλ' ὡς μάλιστα οἷόν τε γένοιτ]ο αὐτοῖς [συγ]γενικῶς ἐπιλῦσαι τὰ νείκ[η]*,[3]

and the decrees in which Pitane and Mytilene accept its intervention both lay emphasis on the close kinship which unites them to the Pergamene state.

[1] XI.

[2] See also V, ll. 5, 21; XII, C l. 3; XVIII, ll. 17, 19; XLV, A l. 15, B ll. 17, 20, 27, 30; LVII, l. 3; LVIII, l. 47; LXXXII, ll. 8, 10, 11.

[3] LIX, l. 97 f.

Further, friendship between the two disputants is more likely to be secured by mediation resulting in an agreement than by arbitration. It is this thought which leads the Magnesians to bring forward so prominently the idea of friendship between Itanus and Hierapytna in connexion with their attempted mediation. Their aim is not merely to settle a dispute, it is rather to cement a friendship where in the past there has been a feud: their efforts are directed, to quote their own words, to 'the restoration of the original friendship',[1] and in their minds, as in their record, *σύλλυσις καὶ φιλία* stand in very close relation. And this same attempt to settle quarrels upon the basis of mutual agreement, wherever this was practicable, appears as a characteristic feature not only of the work of international arbitrators but also of the procedure of those judges who were called in by Greek states from friendly cities to decide internal differences, and to try cases which, it was thought, would be more satisfactorily dealt with by external judges.[2] We have constantly reiterated testimony to the fact that these exerted themselves to bring about, wherever possible, a 'settlement out of court', and only in the last resort employed the judicial authority vested in them.[3]

But while we cannot but highly commend this desire of the Greek arbitral courts to bring about a settlement of the disputes submitted to them which should not merely be equitable and final but

[1] LVI, l. 33 f.

[2] Sonne, *Arb.* p. 52 ff.; cf. Hitzig, *Staatsverträge.*

[3] e.g. Ditt. *Syll.*[2] 228 l. 4 f.

should also pave the way for a better understanding between the states involved and thus render the recurrence of similar differences in the future less probable, we cannot close our eyes to the fact that those who composed those courts were essentially arbitrators and not mediators. An arbitrator may mediate, but a mediator as such has no arbitral authority, and in the cases before us, where a solution could not be reached by mutual agreement, the court had the right and the duty of pronouncing an award which was binding upon both parties. We can well understand that in a large number of cases this was found necessary. For the usual and normal method of settling international disputes amongst civilized states is neither mediation nor arbitration but negotiation. Only when the resources of diplomacy fail to solve the difficulty is external intervention permitted or invited. Among the ancient Greek states there was an active and highly developed diplomacy, so that most causes of friction never came before external judges at all, and, that being the case, it is hardly to be wondered at that in numerous cases mediation was found to be no more effective than negotiation had been. Yet there is a note of genuine disappointment in the Magnesian statement which immediately follows the passage already quoted:

τῆς δὲ προθέσεως ἡμῶν μὴ τελ[ε]ιουμέ|νης διὰ τὸ ὑπερβαλλόντως αὐτοὺς τὴν πρὸς ἀλλήλους φιλονικίαν ἐνεστάσθαι, συνέβη τῆι ψήφωι | τὴν κρίσιν βραβευθῆναι.[1]

Before voting the judges took the oath, if they

[1] LVI, ll. 35 ff.

had not already done so earlier in the proceedings.[1] Then the votes were given, being distributed to the members of the tribunal, if a large one, by the presiding officer or officers.[2] On one occasion the voting is expressly said to have been secret (*κρυφαίως*),[3] and this may represent the normal practice; there can be no doubt that questions of this kind were settled in accordance with the usage obtaining in the state represented by the arbitral court. The actual number of votes given on each side is four times recorded. In the arbitration record of the Delphian Amphictiones the verdict of each community represented in the council is set forth separately, and we see that the twenty-four votes were all given in favour of the maintenance of the frontier-delimitation of 337 B.C.[4] Of the six hundred Milesians who arbitrated between Sparta and Messene, 584 voted in favour of the latter and sixteen in favour of the former;[5] in the case between Cos and Calymna the majority was decisive though not equally crushing, 126 Cnidians voting for the defendants and seventy-eight for the plaintiffs;[6] finally, in the dispute between Cierium and Metropolis, 298 of the judges took the side of the former and thirty-one of the latter, while the remaining five votes were invalid (*ἄκυροι*), for some reason which is not stated.[7] In none of the other extant records, however, is any reference made to the partition of the votes, for the verdict of the majority was

[1] p. 115 f.
[2] LXXV, l. 52.
[3] XLI, ll. 2, [14], 20.
[4] XXVI, Col. B l. 32–C l. 8.
[5] I, ll. 66 ff.
[6] LXXV, ll. 83 ff.
[7] XLI, ll. 5 f., 14 f., 20 ff.

regarded as that of the whole court, no 'minority report' being admitted, and was published accordingly.

In all such cases, where the members of the court were citizens of a single state and gave each one vote, the procedure is quite simple so far as it is reflected in the extant inscriptions, nor is it easy to see how any difficulty could arise except by an equality in the votes given for each side in one of the rare instances in which the court consisted of an even number of judges.[1] Even simpler was the determination of the verdict where the arbitrator was a single individual and there could be no question of a dissentient minority. One phenomenon does, however, call for examination and discussion. In at least six instances known to us[2] the tribunal is not homogeneous, but consists of representatives of two or more states.[3] In some of these the difference of citizenship may have been ignored and the award decided, as in the cases already discussed, by the majority of the votes given; but a passage of Plutarch[4] suggests that this method was not always followed. He tells of a dispute between Andros and Chalcis in which those two states agreed to refer the question to the arbitration of Erythrae, Samos, and Paros, and goes on to state that the Erythraeans and Samians voted in favour of Andros, the Parians in favour of Chalcis. This is most naturally interpreted as

[1] pp. 101 ff.

[2] XVI, XXVIII, XXXIV, LVII, LXX; Plut. *Quaest. Graec.* 30. XXVI does not stand on quite the same footing.

[3] See p. 97.

[4] *Quaest. Graec.* 30.

implying that the arbitral court consisted of three separate panels; each of these gave a single verdict, determined by the majority of the votes of its members, and the decision of the court as a whole depended upon that of the majority of the three panels. We have here, to my mind, the explanation of the statement made by the Narthacians to the Roman Senate about 150 B.C., that two years previously (*ἔτει ἀνώτερον τρίτῳ*) they had been successful

> *ἐπὶ τριῶν δικαστηρίων, ἐπὶ Σαμίων, Κολοφωνίων, Μαγνήτων.*[1]

Dittenberger[2] agrees with Viereck[3] in thinking that in these words a single composite court is referred to, but suggests that the phrase was perhaps intentionally chosen to suggest to those who were not acquainted with the facts that the Narthacians had been successful in three successive arbitral trials. The former conclusion compels assent; it is inconceivable that the same case should come up for decision three separate times within a single year. But the second hypothesis, though not excluded, is rendered unnecessary if we interpret the statement of the Narthacians to mean that in a court composed of three panels they had secured the favourable verdict not merely of two, but of all three. It may seem too bold to interpret the events of 150 B.C. by those which had taken place some five centuries earlier, as has just been done, but it may be that a further example of the same procedure is to be found in the arbitration between Myus and Miletus,

[1] XXXIV, ll. 55 ff.
[2] Ditt. *Syll.*[2] 307 note 25.
[3] P. Viereck, *Sermo Graecus*, xii.

which must be dated soon after 392 B.C.[1] The main extant fragment of the record begins by giving the names of twenty-five judges, comprising five from Erythrae, Chios, Clazomenae, Lebedus, and Ephesus respectively; but whether all the other states of the Ionic Confederacy were similarly represented on the tribunal or not it is impossible to determine. In any case it seems to me to be probable that on this occasion also the votes of the individuals were to determine those of the panels, and those of the panels that of the whole court. A further case in which the same method of arriving at a verdict may have been adopted is that in which the court is composed of citizens of Rhodes, Delos, Paros, and a fourth state, but the record is too mutilated to show whether all four were represented by an equal number of *δικασταί*, and the even number makes it less probable that the votes were counted by panels, since an equal division might so easily have resulted.[2]

[1] LXX. [2] LVII.

V

THE EVIDENCE ADDUCED IN ARBITRAL TRIALS

In the preceding chapter we have examined the procedure followed by Greek arbitral courts from the time of their appointment down to the finding of the verdict. Our next task is to inquire into the nature of the evidence which they were called upon to examine and weigh. This evidence was very diverse in character and conflicting in tendency, as was inevitable at a time when clear title-deeds, as we now understand them, can hardly be said to have existed at all, and when a skilled pleader might influence a popular court by appeals which would be regarded at the present day as wholly irrelevant. Fortunately the ancient arbitrators thought well in some instances to append to their award a summary of the main evidence upon which their decision was based, and we are therefore in a position to judge of the pleas put forward by each side in a number of important cases.

The form which the evidence took and the manner in which it was presented to the court are most fully described in the Cnidian decree already quoted,[1] but neither in that document nor in the account of the trial which follows is anything said of the contents of those 'decrees and challenges' and other public documents, of the depositions of absent wit-

[1] pp. 120 ff.

nesses to which reference is made, or of the arguments used by the several speakers and the testimony of witnesses to which they appealed for confirmation. All this we are left to infer from the summary of the claimants' case, which the court has put on record, culminating in the demand for the repayment of thirty talents.[1] Of the Calymnians' defence nothing is said: the inscription ends abruptly by stating that a verdict was given for the defendants by 126 votes to seventy-eight, and recording the date and the names of the counsel on either side.[2]

All the other examples of international arbitrations in which we learn anything of the evidence relate to territorial disputes, whether between neighbouring states regarding the boundary between them, or between states which put forward counter-claims to the possession or administration of certain territory. Had fortune preserved to us the *Oratio Deliaca* of Hyperides, in which the orator successfully championed before the tribunal of the Amphictiones the claims of Athens to the administration of the Delian sanctuary, we should have a clearer idea of the form which such speeches ordinarily took and of the evidence upon which their authors relied. But the few fragments of this speech which survive[3] tell us but little of its structure and content, though it is significant that the longest but one of them deals with the wanderings of Leto and the birth of Apollo and Artemis, and that Maximus Planudes writes that Hyperides, 'desirous of proving that the Delian sanctuaries

[1] LXXV, ll. 53–82. [2] ll. 83–90.

[3] *Hyperidis orationes et fragmenta*, ed. F. G. Kenyon (Oxford, 1906), *frgg.* 67–75.

belonged of old time to the Athenians, has made great use of mythology'.[1] A similar appeal to Greek tradition and to the testimony of the early epic poems is attributed by several authorities[2] to Solon, who is said to have quoted before the Spartiate arbitrators two verses[3] from the Homeric Catalogue of the Ships, of which the second was currently supposed to have been invented by him in order to support the Athenian claim to Salamis. Of the historical truth of this story we cannot judge with certainty, but in view of what is known of Hyperides' speech and of the appeals which we shall proceed to examine, it must at least be conceded that the tale *se non è vero è ben trovato.* Even in A.D. 25 the envoys of the Spartans, who maintained before the Senate the claim of their state to the possession of the ager Dentheliates and the temple of Artemis Limnatis, relied upon

annalium memoria vatumque carmina.[4]

But the Messenians were not to be outdone; they put in a counter-appeal to the

vetus inter Herculis posteros divisio Peloponnesi

and to the

monimenta eius rei sculpta saxis et aere prisco,

and went on to assert that

si vatum, annalium ad testimonia vocentur, plures sibi ac locupletiores esse.[5]

[1] Max. Planud. *ad h. l. t.* V, p. 481 Walz (*Oratores Attici* ii. p. 392, ed. Didot).

[2] Plut. *Solon*, 10; Strabo, ix. 1, p. 394: cf. Arist. *Rhet.* i. 15. 13, p. 1375 b; Quintil. *Inst. Orat.* v. 11. 40.

[3] *Iliad* ii. 557–8. See Leaf's note ad loc.

[4] Tac. *Ann.* iv. 43.

[5] Tac. loc. cit.

And the appeal to this noble array of bards and historians, coupled with the authority of the inscriptions, won for the Messenians on this occasion their sixth victory in the long series of arbitrations to which this temple and strip of border-land gave rise.

Turning from these statements of ancient orators and historians to the more precise indications afforded by the epigraphical sources, we find five specially striking records in which the evidence brought before arbitral courts is set forth in some detail. The earliest of these[1] consists of the opening portion of a rescript addressed to 'the Council and People of the Samians' by King Lysimachus (306–281 B.C.), who had undertaken to settle a dispute between Samos and Priene, which had begun some three centuries earlier and was destined to continue for at least a century and a half longer. Unfortunately the latter part of the letter, containing a statement of the Samian arguments and the award of the king, has perished, but we still possess a *résumé* of the case for the Prienians, as stated by their envoys. These set about to prove,

> *ἔκ τε τῶν ἱστοριῶν καὶ ἐκ τῶν ἄλλων μαρτυρίων καὶ δικαιωμάτων μετὰ τῶν ἐξετῶν σπονδῶν,*[2]

that the territory in dispute had belonged originally to the Prienians, and that their tenure of it had been uninterrupted down to quite recent times, save during a short period when the Cimmerian invasion, under the leadership of Lygdamis,[3] caused the withdrawal

[1] LXI. For the date see p. 41. [2] LXI, l. 12 f.

[3] That the Lygdamis of LXI, ll. 14 ff., 29 ff. must be the Cimmerian leader referred to by Strabo i. 3, p. 61 and Hesych. *s. v.*, rather than the Naxian tyrant of that name, has been demonstrated

of all the Greek inhabitants of the district. Samians, indeed, had settled there from time to time, but only in the position of resident aliens (*κάτοικοι*), and their payment of taxes to the Prienians had amounted to a virtual acknowledgement of the claim of the latter to be the rightful owners of the land. Indeed, that claim had been formally acknowledged in a treaty (*συνθήκη*) negotiated by Bias of Priene, and in virtue of this the Prienians requested Lysimachus to restore the territory to them. What was the Samians' reply and what were the authorities to which they appealed the mutilation of the stone prevents us from learning, though a later record definitely states that they too on this occasion brought forward the witness of historians;[1] but that the evidence was regarded by the king as satisfactory we may infer from the fact that the award appears to have been in their favour.[2]

About a century later a Rhodian tribunal is appointed to arbitrate 'about the territory in dispute between Samians and Prienians ... and the fortress called Carium', which lay within it.[3] On this occasion it was the Prienians who were successful, but for us the interest of the trial lies chiefly in the detailed account of the arguments employed by the two contending parties, which was published by the court as an appendix to its award. It occupied originally some 180 lines of the record discovered at Priene by Lenschau (*De rebus Prienensium*, pp. 126 ff.) and Dittenberger (*O. G. I.* 13 note 9).

[1] LXII, l. 102.

[2] I follow Waddington, Lenschau, and Dittenberger here in preference to Hicks and Bérard.

[3] LXII, ll. 7 ff., 25 f.

and now in the British Museum, and of these ninety are preserved almost entire or are capable of fairly certain restoration. The Samians, as claimants, spoke first:[1] they told, in a passage which has come down to us in so fragmentary a condition that little is now discernible save its barest outlines, of the war which they and the Prienians had waged in common against Melia,[2] and of the subsequent partition of the conquered territory between the victorious allies. The question at issue was whether on that occasion Carium and Dryussa fell to the lot of the Samians or no. The Samian representatives pointed to a passage in the Histories of Maeandrius of Miletus as substantiating their claim. The Prienians,[3] in their answering speech, dwell upon a more recent episode in their history. A tyranny had been established in Priene by a certain Hiero,[4] and a body of citizens who had been exiled by the tyrant and his adherents seized the fortress of Carium and put to death its commandant and garrison, who unanimously declared in favour of the tyrant; after three years[5] they succeeded in overthrowing Hiero's rule and returned to their city, but 'retained the fortress as aforetime and cultivated the land' around it.[6] In the following year they sold thirty-seven lots of the territory in question, and five years afterwards five further lots were similarly disposed of.[7] This statement, which, if correct, proved conclusively that Carium was in Prienian hands during the first twenty years of the third century B.C., was substantiated at every turn by the

[1] ll. 44 ff.
[2] ὁ πόλεμος ὁ Μελιακός, ll. 56, 108, 118.
[3] ll. 63 ff.
[4] l. 110 f.
[5] ll. 81, 112.
[6] ll. 81–83.
[7] ll. 83–90.

production of official documents: we hear of a decree sent by the tyrant and his adherents to the liberators, of decrees dispatched by several states to them after their seizure of the fortress,[1] of a decree which the liberators sent to Rhodes asking for assistance, of Prienian appeals to Kings Demetrius and Lysimachus, of three similar documents sent by or to Rhodes at the same crisis and, finally, of 'two other decrees existing in the temple' of Athena, confirming the sale of the thirty-seven lots of land. To all this there is but one answer which the Samians can make; acknowledging the facts as stated by the Prienians, they maintain that the land in dispute, which was originally and rightfully theirs, had been appropriated by their rivals. This plea and the fact of an appeal to Lysimachus may be inferred from the extant fragment of the Samian reply,[2] which has almost entirely perished, together with the whole of the Prienian rejoinder with the exception of its concluding passage. This is to the effect that in a letter from Agesarchus dealing with the questions at issue between Samos and Priene, only private disputes had been mentioned and no word had been said of any claim laid to the fortress and the surrounding territory. In a fifth and final speech the Samians give a summary of the whole question from their point of view.[3] By bringing forward the historical evidence which had served them in such good stead in the former arbitration before Lysimachus, they tried to prove that Carium and Dryussa had fallen to their lot, in the seventh

[1] One of these, sent by Ephesus, has survived: see *Jahreshefte*, ii, Beiblatt, 47 f.; *I. v. Priene*, 494.

[2] ll. 90 ff. [3] ll. 101–118.

century B.C., after the conclusion of the Meliac War, as was asserted by Maeandrius of Miletus. The famous battle at 'the Oak' was followed by a treaty negotiated by Bias for the Prienians, under the terms of which the territory still remained Samian, since the frontier-line between the two states was placed at the watershed; that this was actually so was proved by the statements of the historians Euagon, Olympichus, and Duris. The fortress had then remained in Samian hands until seized by the Prienian exiles as a base of operations against the tyrant Hiero. It was not, however, until after the overthrow of the tyranny and the return of the liberators to their city that the Prienians first laid claim to the land, on the occasion of a revision of their land-register made by the Samians with a view to prevent the possibility of territorial disputes. Under these circumstances they claimed 'that the lot which had originally been their own, but had subsequently been taken from them by the Prienians, should be restored to them'.

So far the arbitrators have given us a summary of the speeches delivered by the advocates representing each state and the documentary evidence brought forward. They go on to set forth a statement of the reasons which have led them to give the award in favour of Priene.[1] The mainstay of the Samian cause consisted of certain passages relating to the division of the spoils after the Meliac War in historical works, four of which had been expressly cited as favouring the Samian claim. An examination of these writings, however, proved that only in the history which bore the name of Maeandrius of

[1] ll. 118–157.

Miletus was it stated that Carium and Dryussa fell to the lot of Samos, and the authenticity of that treatise was widely called in question.[1] All the other authorities agreed in stating that Phygela had been the Samian share—Creophylus and Eualces of Ephesus, Theopompus of Chios and, most significant of all, the four native Samian historians, Uliades, Euagon, Olympichus, and Duris. Further, after the award given by Lysimachus, although it had been proved that the Prienians were in possession of the territory in question and actually sold forty-two lots, yet no protest had been lodged by the Samians, no embassy sent to Priene to remonstrate against their action. Again, in 258 B.C., when Priene was in difficulties, the Samians sent envoys to charge the Prienians with the transgression of their frontiers, but again no mention was made of the fortress Carium. The same was true subsequently on more than one occasion: though there had been no lack of recriminations on the part of the Samians, these had not been prompted by the Prienian occupation of Carium and its immediate neighbourhood. Bearing all this in mind, the arbitrators conclude their report with the statement that they have found all the contentions of the Prienians absolutely justified and they therefore give judgement in their favour.

The third document[2] which calls for examination here is also concerned with a territorial dispute in which Priene was engaged with a powerful neighbour about the same time (soon after 190 B.C.); on this occasion the quarrel was with Magnesia on the Maeander, and the case was tried by a court appointed

[1] l. 123. [2] LXVI.

by Mylasa. But the circumstances were in some ways strikingly different. In 201 B.C. Philip V of Macedon had made himself master of the city and territory of Myus and had presented them to the Magnesians:[1] it is a portion of this land which, less than a quarter of a century later, is in dispute. Part of the summary of the evidence, as drawn up by the arbitrators, is still extant[2] and proves, as we should expect, that the appeal in this case is not to historical records, but to the actual facts of a recent situation. The opening lines of the passage are so fragmentary that they supply us only with isolated words and phrases, the connexion between which is no longer traceable. In one place they refer to *χρηματισμοί*, documents deposited in the public archives, and in another to a visit paid by the tribunal to the territory in dispute. Then follows a continuous statement, the general meaning of which is clear, although in details it presents some difficulties of interpretation. It insists chiefly upon the failure of the claim put forward by the Prienian advocates on behalf of their state. A raid (*καταδρομή*) had been made into the disputed area by marauders, who had burned buildings and carried off cattle. If the land really belonged to the Prienians, why were they not there to guard it and to maintain their possession?[3] The Prienian representatives urged that steps had been taken with that end in view; a certain Lysander of Priene had been entrusted with the task, but he had failed to protect the frontier and had in

[1] Polyb. xvi. 24. 9 *Μυοῦντος κυριεύσας τοῖς Μάγνησιν ἐχαρίσατο τὸ χωρίον ἀντὶ τῶν σύκων.*

[2] LXVI, ll. 64 ff. [3] ll. 72 ff.

consequence been brought to trial and condemned. This story was, however, so plainly a fabrication that it told powerfully in favour of the Magnesians. The sentence against Lysander, if a genuine one provoked by a real offence, should have been carried out, or remitted, or settled in some other way; but the Prienians failed to show that any action at all had been taken in the matter, and the fine was found to be still unpaid. Moreover, the Prienians stated that a certain Dionysius had assigned to Lysander his task, but Dionysius was proved by official documents to have been far away from home at the time of the alleged condemnation,[1] partly engaged in an embassy to Rome, partly undergoing a sentence of banishment. The whole story, therefore, failed to carry conviction, but even apart from this (the report continues) the irrefutable account of the Prienian raid was sufficient to prove that the Magnesians were in possession at the time and were cultivating the land. A previous statement of the Prienians, the precise force of which we cannot now determine, and a letter read by them in support of their claims, are mentioned only to be dismissed as failing to explain the Prienian action.

We learn something, too, of the nature of the evidence from the arbitral award issued by a Pergamene tribunal in a territorial dispute between Pitane and Mytilene[2] soon after the middle of the second century B. C. The statement[3] is so seriously mutilated that no sense can be made of the greater part of it, but we learn that on this occasion also the works of historians were used as evidence,[4] while

[1] l. 81 ἐλέγετο ἡ καταδίκη [γεγον]έναι. [2] LIX.
[3] ll. 123–156. [4] l. 125.

fragmentary phrases such as 'having occupied this territory'[1] and 'retained in their hands for many generations'[2] seem to indicate an appeal to prescriptive right. But the Pitanaean claim was supported by more modern and more cogent evidence as well. They were able to point to a sale of certain territory by Seleucus I Nicator (306–280 B.C.) and to their purchase of ἡ πεδιὰς χώρα from his son and successor Antiochus I Soter (280–261 B.C.), and in confirmation of the latter they appealed to an inscription set up in the Athena-sanctuary on the Pergamene acropolis. Their absolute ownership (παγκτητικὴ κυρεία) of the land in question was 'irrefutably proved' by marble stelae dedicated in the sanctuaries at Ilium, Delos, and Ephesus, on which was inscribed Antiochus' rescript relating to the possession of the land in question. Further, the Pitanaeans were able to produce a letter of Eumenes I (263–241 B.C.) confirming their ownership in terms which are quoted κατὰ λέξιν by the arbitrators:

> 'and we grant you also the absolute, undisputed and acknowledged possession of the land for ever.'[3]

From this point onwards the report is very fragmentary, but two facts seem to be established. The dispute arose in connexion with a decision—possibly, but not certainly, arbitral—pronounced by Antiochus in a question concerning Elaea;[4] but the difficulty was apparently overruled by the court in view of the rights of the case in general,[5] and the award was given in favour of the Pitanaeans.

[1] l. 126. [2] l. 127.
[3] l. 142 f. [4] l. 144.
[5] l. 147 [περὶ] πάντων τὸ δίκαιον θεωρο[ῦντες].

Within a few years of this time, probably in 139 B.C.,[1] the Magnesians undertook, on the request of the Roman Senate, to arbitrate in a territorial dispute between Itanus and Hierapytna, in eastern Crete. Of the report of the tribunal[2] a considerable portion has survived, partly in the inscription set up at Magnesia and partly in the replica inscribed by the Itanians to commemorate their victory. The report opens with a brief historical introduction,[3] giving a sketch of the events which had led up to the dispute,

> 'as contained in the documents submitted to us bearing upon these points,'

and apparently unquestioned by the Hierapytnians, and the appeal of Itanus to the Senate, together with the exact terms of the reference to the present tribunal, as formulated in a Roman *SC.*[4] This introduction is followed by the award of the court. One point had been proved at the outset, that the territory in dispute had originally belonged to the Itanians and had been continuously in their possession[5] down to the outbreak of the Cretan war which followed the death of Ptolemy VI Philometor (181–146 B.C.). The Itanians had proved this by adducing three official boundary-delimitations, which were acknowledged as genuine by their opponents,[6]

1. that between the Itanians and the Dragmians, their former neighbours;[7]
2. that between the Itanians and the Praesians,

[1] Ditt. *Syll.*[3] 929 note 7. [2] ἡ καθήκουσα ἔχθεσις, LVI, ll. 37 ff.
[3] ll. 37–54. [4] ll. 51–54. [5] l. 55 διακατεσχημένην.
[6] l. 57 ὑφ' ἑκατέρων. [7] ll. 59–61.

after the latter had conquered the Dragmians and annexed their territory;[1]

3. that between the Itanians and the Hierapytnians, after Praesus had been destroyed and its territory amalgamated with that of Hierapytna.[2]

The crucial passages of these three *περιορισμοί*, the *ipsissima verba* of which are quoted in the arbitrators' report, made it clear that the area in dispute lay wholly within the Itanian frontiers. This was, indeed, admitted by the Hierapytnians, who, however, maintained that it was sacred to Dictaean Zeus,[3] and consequently untilled.[4] This assertion was refuted by a number of documents (*γράμματα*), which showed that the land was under cultivation, as well as by the *SC.*, which defined the reference of the arbitration: this had been drawn up by Roman legati, who had a personal knowledge of the site, and, so far from making any allusion to *ἱερὰ χώρα*, showed by its use of the phrase 'to have, hold and enjoy the fruits of' the land[5] that the area in question was, and would be in the future, under cultivation.[6] A series of parallel extracts from other Roman *senatus consulta* was quoted to prove that in resolutions dealing with sacred lands the Roman Senate was careful expressly to mention their character, and thus to rebut the argument which the Hierapytnians had advanced, or might advance, that the phrase *ἔχειν κατέχειν τε καρπίζεσθαί τε* was a stereo-

[1] ll. 61–65. [2] ll. 66–67.
[3] l. 48. [4] l. 73 *ἱερὰ καὶ ἀγεώργητος*. Cf. l. 78.
[5] l. 79 *ἵνα ἔχωσιν κατέχωσίν τε καρπίζωνταί τε*. [6] ll. 73–81.

typed formula, which must not be taken *au pied de la lettre*.[1]

> 'But the clearest and most convincing evidence of all,' the report continues, 'that the Romans have made up their minds on the case as a whole, and that the questions upon which we have given our verdict are acknowledged and already decided, is this, that when the Itanians requested the Senate that the hamlet (χωρίον) which had been built by the Hierapytnians upon the disputed territory should be destroyed, the Senate gave instructions to Lucius Calpurnius L. f. Piso the praetor that any buildings put up upon it should be destroyed, making it plain in this way also...'[2]

Here the Itanian copy of the award fails us, and the remaining lines can only be partially deciphered upon the worn and broken surface of the Magnesian stone. But it is easy to complete the sense of the sentence and to determine the character of the culminating proof referred to. Unless the Senate had been convinced that the Itanians were the rightful owners of the land, it would hardly have complied with their request and given orders to Piso to take such drastic action against the Hierapytnians.

It cannot fail to strike us in reading this passage of the report that the arbitrators here frankly acknowledge that they have been greatly influenced by this clear indication of the Senate's conviction that the Itanian claims were justified. This may appear to us tantamount to a confession of prejudice and a refusal to treat the case fairly on its own merits. But this change must not be pressed too far. The attitude of the Magnesian arbitrators is rather this,

[1] ll. 82–84. [2] ll. 84–88.

that the Romans, 'the common benefactors,'[1] are the sole disinterested witnesses in the case; the testimony of Itanians and Hierapytnians must be accepted with caution, but that of the Roman Senate, instructed by Q. Fabius and his fellow legati, who had personally visited the temple of Dictaean Zeus and its surroundings,[2] might be regarded as wholly unbiased.

The sequence of thought and argument in the remainder of the inscription cannot be followed closely owing to the fragmentary nature of the text. But its general tenor is plain, and some of the evidence to which it refers is noteworthy. The question of the disputed area is continued for five more lines,[3] in which appeal is made to witness, both oral and written, in favour of Itanus, and to the 'proofs afforded by poets and historians'.[4] The report then passes on to deal with the island of Leuce, the modern Kouphonisi, which was also claimed both by the Itanians and by the Hierapytnians. The former, who, at a time of weakness, had placed themselves under the protection of Ptolemy Philometor, were able to produce copies of letters from that king, which referred to Leuce as a possession of Itanus,[5] and documents of their own which pointed to the same fact, as well as official lists recording the annual administration of the island. They further brought forward letters from other states, including Hierapytna

[1] l. 22.

[2] l. 75. Note the repeated ἐωρακότες. [3] ll. 89–94.

[4] l. 93 [ποιη]τῶν καὶ ἱστοριογράφων ἀποδείξεις. Cf. *I. v. Magnesia*, 46, l. 13 f.; Tac. *Ann.* iv. 43 *annalium memoria vatumque carminibus.* [5] l. 97 f.

itself, making it evident that the island belonged to the Itanians and had been continuously in their possession down to the Cretan war referred to in the *SC.* Their claim was further supported by two letters addressed to Itanus, of which copies are inserted in the report, one from Gortyn [1] and the second from Hierapytna.[2] In the latter is found the phrase 'from your island of Leuce',[3] a clear acknowledgement of the Itanian claim to the island. At this point the report becomes more rhetorical and abstract—also, unfortunately, even more fragmentary. Who, it asks, could admit the contention of the Hierapytnians in face of the evidence brought forward? A title to land always rests either upon hereditary possession or upon purchase or upon conquest or upon gift by a superior power—and in the present case the Hierapytnians can point to none of these modes of acquisition as entitling them to Leuce.

A happy chance has preserved for us an interesting fragment,[4] which gives a verbal copy of the depositions made in a territorial arbitration in which the little state of Condaea was one of the interested parties. The first of these runs as follows:

> 'Ladicus, son of Harmodius, of Ascuris, bears witness to the Condaeans. I know the land, which I also pointed out in person to the judges as I came down from the summit of Nyseum, the place nearer to us, as far as the defile, which the Condaeans too showed to the judges; and I used to hear from the older men that at this spot the land belongs to the Condaeans; and I know of

[1] ll. 116–121. [2] ll. 125–130.
[3] l. 127 *ἐκ τᾶς ὑμᾶς νάσω Λεύ[κας].* [4] XLIII.

myself that I have been pasturing my flocks in the territory for a considerable time and that the Condaeans keep the passage-duty at this spot.'

Here we have the testimony of an elderly shepherd, who has known the district from boyhood and can tell, moreover, what he has heard from the elders of his village. Nor is he the only witness cited by the Condaeans to support their claim.

'And they produced depositions of Mopseates also, relating to the lower part of the territory. [P]antaeus, son of Cleobulus, of Mopsium . . . (here the stone is defaced) . . . through the river, beginning from the confluence of the Peneus and the Europus, as far as the fishery[1] and the defile which leads from Orcheum; and I know that the Condaeans till and pasture the land round the tower which lies below Minya.'

Three fellow villagers of this last witness, who own the river fishery which lies below Croceas, add their testimony to the Condaean case, maintaining that their fishery was close to that of the Condaeans, which lay below Croceas.

The further evidence on the same side is lost owing to the breakage of the stone, but the passages which survive show that such boundary-suits were not settled entirely by reference to poets and historians and official documents, but that the evidence of shepherds and fishermen, who had pursued their humble callings in the immediate neighbourhood of the disputed territory, also had a share in deciding these momentous contests.

The inscriptions which we have just examined give

[1] *κελέτρα* ll. 26, 33, 35. Cf. Hesych. *κέλετρον· ᾧ τοὺς ἰχθύας θηρῶσιν ἐν τοῖς ποταμοῖς.*

us the most valuable and detailed evidence we possess regarding the arguments and proofs brought forward in arbitral courts to make good a title to disputed territory. And, taken together, they afford what is in all probability a fairly complete picture, the main outlines of which are not likely to be altered by subsequent discoveries, however much these may serve to fill up some existing gaps and to add detail and precision.

We have seen that evidence both oral and written is admitted by the arbitrators. The former will include not only the testimony of those citizens of the two contending states who, either because of their official position or from their knowledge, gained in other ways, of the question under discussion, can bear out the assertions of the state-advocates, but also that of neighbours, of however humble a rank, whose witness will carry all the more weight because of its disinterested character. The written evidence will consist in part of the depositions, duly recorded on oath, of those witnesses who are unable to appear in person before the arbitral court; in part, of the public documents pertinent to the case, whether contained in parchment or papyrus laid up in the state archives or inscribed upon stone in temples or other public places; in part, of literary works, whether in verse or in prose, which referred to any of the questions in dispute. Literary, epigraphical, papyrological evidence—we are brought back once more to our original classification. Nor were archaeological appeals unknown, if we are to accept as historical the tradition that, in the famous dispute between Athens and Megara for the possession of Salamis, Solon

appealed to the evidence of tombs discovered upon the island, for (he claimed) the Athenians bury their dead turned westward, while the Megarian dead lie towards the east. The Megarian advocate, Hereas, accepted evidence of this character as valid, but maintained that his countrymen also buried in a westward position, and that the real test lay in the fact that, whereas the Athenians placed but one body in a tomb, the Megarians often interred three or four bodies together.[1]

Conflicting statements must be weighed one against another, difficulties arising from the diversity of the laws in the various Greek states must be solved,[2] allowance must be made for prejudice and the distortion caused by personal or national pride or interest, and on occasion the arbitrators might even be called upon to sit in judgement upon the authenticity of a current historical work.[3] Moreover, the value of indirect evidence must frequently be estimated, and ancient claims, going back sometimes to the mythical period,[4] might be at variance with the prescriptive right acquired by uninterrupted tenure in historical times. The task of the arbitrators, it need hardly be said, was often no easy one, especially where the courts were of large size and democratic composition. Yet the impression we receive from a careful review of the extant records is favourable alike to the thoroughness with which the courts examined all the available evidence and to the conscientiousness with which they arrived at their final verdict.

[1] Plut. *Solon*, 10; Aelian, *Var. Hist.* vii. 19; Diog. Laert. i. 48.
[2] XLII, ll. 31, 32, 38. [3] See p. 139 f.
[4] See p. 133 f., and add II, l. 35 f.

VI

THE AWARD

ONE more task remained before the work of the arbitrators was accomplished. The award of the court must be duly placed on record and communicated to the two disputants. In a question of this kind we have to fall back entirely upon inscriptions for our information, but fortunately the evidence is abundant and presents no special problems.

To judge from a statement[1] of the Magnesian arbitrators who settled the dispute between Itanus and Hierapytna, it would seem that sometimes the members of the arbitral court individually recorded their verdicts in writing. But this course was probably exceptional, and in the majority of cases it is likely that the secretary, or, in his absence, the president of the court, drew up a written statement of the award.[2] Sometimes this was read to the representatives of the states concerned immediately after the conclusion of the trial, and copies were delivered to them to be conveyed to their respective cities: at other times the verdict alone was

[1] LVI, l. 32 *ἐνγράφους θέμενοι τὰς γνώμας*. But the phrase perhaps means no more than 'having written out the votes' which were to determine the award of the court: or can the plural *τὰς γνώμας* refer to the fact that there were two questions before the court? In any case, the force of the expression is plainly 'when we had definitely and finally made up our minds'.

[2] Cf. II, l. 12 *ἐπιγραφά*.

announced, and the fuller report was subsequently composed and dispatched to the interested states, while there were probably a few cases in which even the verdict was not at once pronounced. It is plain, for example, from the use of the aorist and imperfect tenses throughout the rescript of Lysimachus[1] that this was written some time after the hearing of the evidence brought forward by the Samian and Prienian envoys, for had it been drawn up immediately after the trial the perfect tense must have predominated. The important point was that the award should be made known, clearly and authoritatively, to the two states most nearly concerned, and this could only be secured if it was delivered in writing to the representatives of those states, either immediately or as soon as convenient after the close of the trial. The Rhodian report, in many ways the best which has survived, calls special attention to this part of the arbitrators' functions; after recording the award of the court, it continues:[2]

> 'and having given this award in the case and made two copies of it, we delivered one to the Samian prytanes (here follow five names) and to the Secretary of the Council, Menippus, son of Cleon.'

Then follows the date, according to the Rhodian and the Samian calendar, and a second paragraph, similar to the last, giving in full the names of the Prienian officials to whom the other copy was handed with the exact date on which it was delivered to them. And it is interesting to notice that the Pitanaeans and Mytilenaeans, in accepting the offer

[1] LXI. [2] LXII, ll. 27 ff.

of the Pergamene envoys to arbitrate between them, stipulate explicitly that they 'shall deliver to each of the states a written record of the award'.[1]

While, however, copies of the award were thus handed by the court to the litigants, the original and authoritative document remained in the hands of the arbitrators, and was lodged by them among the archives of their state,[2] as we may infer from the following letter:[3]

> 'The prytanes of the Milesians and those elected to secure the public safety to the magistrates and synedri of the Eleans, greeting. Menodorus, son of Dionysius, and Philoetas, son of Cratias, have come to us as envoys from the Messenians and ask us to give them a copy, addressed to you, of the award given to the Messenians and Lacedaemonians in accordance with the resolution of the Senate: the council and the people have granted the aforementioned request, and have directed us to give them the award. We have therefore subjoined it to this letter and have delivered it to the envoys to convey to you, sealed with the state seal.'

But it was not enough that copies of the arbitral decision, written on parchment or papyrus, should be lodged in the archives of three cities,[4] and measures were therefore taken in many cases to secure for it greater and more permanent publicity by inscription upon metal or stone. We have already seen[5] that the account of the Magnesian arbitration between Itanus and Hierapytna was inscribed upon marble not only at Itanus, the successful state, but also

[1] LIX, ll. 30 f., 72 f. [2] Cf. II, l. 15. [3] I, ll. 29–40.
[4] Cf. II, l. 27. [5] pp. 144 ff.

at Magnesia, and not infrequently the arbitrators themselves direct that their award shall be thus published. The Thyrrheans, for example, conclude their brief award with these words:

> 'And let the state of Oeniadae and the state of Metropolis inscribe the award at Thermum, in the sanctuary of Apollo.'[1]

In this case the record was publicly exhibited in the central place of worship of the whole region, and we can have no doubt that the successful state also took measures to have the verdict inscribed and set up in its own principal temple. Still more explicit are the stipulations made in the preliminary compact between Thebes in Phthiotis and Halus, which embodies the conditions upon which these two cities refer their dispute to arbitration.[2] The present agreement and the award pronounced by the arbitrator, Maco of Larisa, are to be inscribed on two columns (*κίονας*), one of which is to be set up at Delphi, the other at Larisa in the temple of Apollo Κερδῴος, before the expiration of the year in which the arbitration takes place, the expense thus incurred being shared equally by the two states. In addition, each of the two states is to inscribe upon a column a similar record and to set it up, the Thebans in their temple of Athena Polias, the Halians in that of Artemis Panachaea. In this case, therefore, a quadruple record of the terms and result of the arbitration was published, of which only the Delphian copy has survived. A somewhat similar proviso is made in the arbitration treaties between Latos and Olus, in

[1] XXVII, ll. 7–9.

[2] XL, ll. 13 ff., 45 ff. Cf. LXXXII, l. 10 f.

one of which the Cnossians, who are accepted as arbitrators, are empowered to inscribe their award on the four Cretan stelae[1] destined for its publication, within thirty days of its adoption, and are directed to send a copy to Delos within the same period, for exhibition in the Apollo temple there.[2] Precisely similar stipulations are made in the companion treaty.[3] Two further examples illustrating Greek practice deserve mention. When Troezen and one of its neighbours, almost certainly Hermione, agree to call in three Athenians to act as arbitrators between them and sanction their mutual agreement, it is enacted that the record shall be publicly exhibited

> 'in the following sanctuaries, that of Poseidon at Calaurea, that of Asclepius at Epidaurus, and that of Athena on the Acropolis of Athens'.[4]

Nothing is here said of inscriptions at Troezen or at Hermione, but the document just quoted was discovered at the former city, and we cannot resist the conclusion that there also a copy of the settlement was inscribed and set up in some sanctuary or other public place. Again, the award settling the disputes between Melitea and Perea is to be inscribed

> 'in Melitea and in Delphi and in Calydon (the home of the arbitrators) and in Thermum'.[5]

Of these four copies, two, that at Melitea[6] and that at Delphi,[7] have been discovered, though the latter is in a very fragmentary condition.

[1] Two of these were set up in sanctuaries at Cnossus, the other two at Latos and Olus respectively: LIII, ll. 11 ff.

[2] LIII, ll. 22 ff. [3] LII, ll. 15 ff. [4] XIII, l. 18 f.

[5] XXXV, l. 31 f. [6] XXXV. [7] XXXVI.

Where the arbitral decision embodied a compromise between the claims of the two opposed states, we may suppose that it was inscribed in both those states, but where the result was the triumph of one of them and the disappointment of its rival, it is hard to believe that in the latter national pride permitted the public and permanent exhibition of the award in some conspicuous place: even if an agreement had been made beforehand so to exhibit it,[1] the authorities would probably find some occasion for setting it aside as soon as possible. It is at least significant that of all the extant awards not one has been found in the unsuccessful city;[2] all have come to light either in that which secured a favourable decision or in the arbitrating state or in some great 'neutral' shrine, notably those of Olympia, Delos and Delphi, and the Epidaurian Asclepieum.

Sometimes the award alone was published, together with the date, the names of the arbitrators and those of the witnesses.[3] But sometimes the victorious state, not content with this, inscribed side by side with these essential particulars other documents relating to the case. The record of Maco's judgement between Thebes and Halus is preceded by the agreement drawn up by the two states to define the terms of the reference and regulate the conduct of the arbitration.[4] The Cierians, in their elation over their victory, gave orders for the inscription of three documents recording the result of their appeal

[1] XL.

[2] It is sometimes contended that LXI, which was found in Samos, records a verdict given in favour of Priene; but this seems to me a mistaken view: cf. p. 136.

[3] e. g. XLVII. [4] XL.

to arbitration, couched in almost identical terms.[1] Similarly an arbitral decision, confirmed by some king or Roman governor, is preceded by a letter insisting upon its due and speedy execution,[2] and an agreement between Paros and Naxos, authorized and ratified by an Eretrian court, is inscribed together with a letter from Eretria recounting the circumstances of the appointment of the tribunal.[3] Twenty-five fragments of an immense marble stele, discovered at Pergamum, bear what remains of a series of three documents, two of which are decrees of the Pitanaeans and Mytilenaeans accepting the proffered arbitration of Pergamum, while the third contains the report and award of the Pergamene court.[4] The later inscription upon the base of the statue of Victory by Paeonius which was dedicated by the Messenians at Olympia also comprises three separate documents, but of a more disparate character.[5] The general title,

Κρίσις περὶ χώρας
Μεσσανίοις καὶ Λακεδαιμονίο[ις],

is followed by (1) a decree of the Elean synedri,[6] granting the Messenians permission, as requested by an embassy, to inscribe at Olympia the arbitral award of the Milesian court of six hundred, (2) a letter from the Milesian magistrates to those of Elis,[7] accompanying (3) the official Milesian record of the case and the award.[8]

The most striking example of all, however, comes from a marble pillar erected in a corner of the market-

[1] XLI. [2] LXVII. [3] XLV.
[4] LIX. [5] I. [6] ll. 3–28. [7] ll. 29–40; see above, p. 154.
[8] ll. 41–70.

place at Magnesia on the Maeander; upon its four sides it bore inscribed a *dossier* of documents relating to the victory of the city over Priene before a court of Mylasian arbitrators. Though some of these are only partially preserved and others have wholly perished, the opening decree gives us what is practically a table of contents,[1] showing that the column, when complete, contained

1. The Magnesian decree which, after summarizing the history of the arbitration, honours those who represented the state in the recent trial, and provides for the due inscription of this and its companion documents;[2]
2. The Roman *SC.* providing for the submission of the question at issue to arbitration;[3]
3. The letter of the praetor, M. Aemilius, to the state of Mylasa, requesting it to undertake the task of settlement;[4]
4. The decree of the Mylasians relative to the appointment of the tribunal;[5]
5. The reply of the Mylasians to M. Aemilius;[5]
6. The award of the court;[6]
7. The names of those who, in whatever capacity, represented Magnesia at the trial.[7]

Of the character of the awards something will be said in the following chapter from the point of view of their substance; here a few remarks may be made upon their form and expression, for which abundant evidence is afforded by more than a score of in-

[1] LXVI. ll. 19–23. [2] ll. 1–33.
[3] ll. 34–63.
[4] This letter, in which the *SC.* is inserted, begins in l. 35.
[5] Lost. [6] ll. 64–90. [7] ll. 91–106.

scriptions. In the earliest case of arbitration which is epigraphically attested, that between Myus and Miletus[1] about 390 B.C., a formal award was rendered unnecessary by the fact that the former state abandoned its claim, and we are told simply that Struses,[2] as satrap of Ionia, confirmed the Milesian title to the land in dispute. About thirty years later, the damage done at Olympia by Arcadians who had seized the sacred precinct was assessed by arbitration, and the award, as still extant, consists of a bare catalogue, —so bare, indeed, as to be in many of its items all but unintelligible[3]—of the sums thus settled. Not until 338 do we find an award which, though meagre and poorly expressed, foreshadows the later development of the arbitrators' report.[4] From the third century onwards, although concise statements of arbitral decisions do not disappear,[5] there is a very marked tendency to replace them by long and sometimes complicated statements of the circumstances of the trial, the evidence adduced and the considerations which led the arbitrators to adopt their verdict. What had originally been a judgement (*κρίσις*) or a declaration (*ἀπόφασις*) becomes in the course of time a full report (*ἔκθεσις*),[6] of which the actual award forms a very small part. In the 141 lines of the Magnesian report on the case between Itanus and Hierapytna which are still extant[7] the full award is

[1] LXX.

[2] Probably the Struthas of Xen. *Hell.* iv. 8. 17 ff., Diod. xiv. 99.

[3] XI. [4] XLVII.

[5] A striking example is XXVII, which, including the date, the title, the actual award, and instructions regarding its publication, consists of only nine short lines.

[6] LVI, l. 37; LIX, l. 110; LXVI, l. 68. [7] LVI.

not yet reached. The document opens with the date and the names of the arbitrators, together with a reference to the circumstances under which they were appointed. Then follows a eulogy of peace and concord between state and state and a remark on the duty of friendly cities to try to restore amicable relations where these have been for any cause interrupted. The intervention of the 'common benefactors', the Romans, is then described, and the reasons which made Magnesia specially suitable as an arbiter between two Cretan communities are set forth. The course of the trial is next related, as well as the attempt of the tribunal to avoid passing an arbitral sentence by bringing about an agreement between the litigant states: the failure of this attempt made it necessary to give a verdict

> 'concerning which we have also drawn up the proper report'.[1]

The rest of the account[2] is taken up with a history of the case and of the evidence brought forward by each state in the two disputes between them, with a running commentary of the arbitrators: this part of it has already been discussed[3] and we need not enter into it more fully here.

The best counterpart to this Magnesian report is that which was drawn up, some forty years earlier, by the Rhodian court appointed to arbitrate between Samos and Priene, a less discursive and more carefully arranged document, but one animated throughout by the same desire not only to make known but also to justify to the world the award it contains.[4] After

[1] l. 37. [2] ll. 37–141. [3] pp. 144 ff. [4] LXII.

recording the names of the judges, the question in dispute, the advocates who represented the two states concerned and the places at which the trial was conducted, the arbitrators briefly declare their award.[1] The officials in each state to whom copies of the sentence were handed are then named, and the speeches delivered on each side are summarized;[2] lastly, the judges sum up their views of this evidence and the reasoning which has led them to their decision, which is reiterated,[3] and end their report with a detailed account of the Samio-Prienian frontier as settled by them.[4]

But the normal statement of an arbitral court in the third and second centuries B.C., the period for which our evidence is incomparably fullest, lies midway between the extreme brevity of the Argive award and the prolixity of the Magnesian and Rhodian reports which we have just considered. If the arbitrator is the Roman Senate, the award is expressed in the ordinary formulae of the *SC.*,[5] while if the decision rests with a monarch, he may communicate it in the form of a letter to the states interested, as we see from Lysimachus's rescript to the Samian Council and People.[6] If, as is usually the case, the award is issued by a private citizen or by a number of citizens representing the arbitrating state, it will normally contain, in addition to the actual sentence, (1) a note of the date, (2) the names of the contending states, (3) the

[1] ll. 25–27. [2] ll. 27–118. See pp. 135 ff., 153.
[3] ll. 118–157. See p. 139 f. [4] ll. 158–170.
[5] XXXIV, LXIV. So also Argos embodies an award in the form of a decree passed by the ἁλιαία ἀ τῶν ἱαρῶν (LI, l. 24 f.).
[6] LXI.

names and nationality of the arbitrators, (4) a reference, if the decision is one affecting a territorial dispute, to a visit paid by the members of the court in person to the land or frontier in question, and (5) some such words as *ἀπέφηνε, ἔκρινε, ἔκριναν, ἐτερμόνιξαν κατὰ τάδε*, introducing the substance of the award.[1] If the court is a large one, the precise number of votes given on each side may be recorded,[2] but this is not done if the number of members is small. Sometimes, finally, the document is attested by the signatures of witnesses; in one case nine Thebans[3] and three Demetrians set their names to the award published by an arbitral board from Cassandrea,[4] in a second the verdict is countersigned by the whole Council of the Aetolians, including its two presidents, by two other magistrates and by three private citizens,[5] while in yet another record we find a considerable list of witnesses, numbering in all probability from ten to twelve.[6]

One further question may be briefly discussed here, for it is raised in several of the arbitration-records which we have examined and concerns the force of the arbitral award after its pronouncement and publication. What was the sanction of such a verdict? The real answer to this question, that which is implied though not expressed in these documents, will be briefly stated in the following chapter;

[1] A good example will be found in XL, ll. 24 ff.

[2] See p. 128.

[3] I take these to be citizens of the Phthiotic, not of the Boeotian, Thebes.

[4] XXXVIII, ll. 30 ff. One of the Demetrians describes himself as a banker.

[5] XXXV, ll. 32 ff. [6] XXXVII, ll. 17 ff.

here we are concerned only with the definite penalties attached to any breach of the award given by the arbitrators.

The most natural and obvious safeguard is to impose a fine upon those who fail to accept and to carry out the arbitral sentence. For example, in the preliminary agreement concluded between Phthiotic Thebes and Halus the following clause is inserted:

> 'Whichever side fails to accept the award, or fails to abide by the award, pronounced by Maco, shall pay to the other state five talents of silver, and in addition a sum assessed by Maco.'[1]

Again, the arbitration agreement between Latos and Olus provides for the appointment, within twenty days, of a number of Cnossians to act as guarantors for the fulfilment of the awards issued by Cnossus under its terms; the sureties appointed by each of the two states make themselves responsible for a sum of ten Alexandrian silver-talents, which, in the event of any infringement of the agreement or of the subsequent Cnossian awards, is to be exacted from the representatives of the delinquent state by the Cnossian cosmi and paid to the state which observes the award.[2] Somewhat similar, though far less detailed, stipulations regarding the appointment of securities are found in the arbitration treaty between Hierapytna and Priansus.[3] In the treaties concluded by Antigonus Gonatas with Eleutherna and Hierapytna, a fine of ten thousand drachmas is

[1] XL, ll. 17 ff. [2] LIII, ll. 32 ff.

[3] LIV, ll. 61, 67. A penalty is prescribed in XXXI, but the passage is too fragmentary to admit of restoration.

imposed upon the city which fails to send aid to Antigonus, if required, within the specified time, or in any way whatsoever contravenes the treaty; whether the treaty has been infringed or not is to be decided by a state chosen by the two signatories in common, but the fine which is to be paid to Antigonus is fixed, and it does not lie within the power of the arbitrating state to assess the penalty according to the seriousness of the offence.[1] Still more striking is a clause incorporated by the Eretrian judges in the settlement concluded by their mediation between Naxos and Paros:

> 'If either state shall contravene this agreement, it shall pay to the Delian god a fine of twenty talents, and if a private citizen shall do so, he shall pay a fine of five talents.'[2]

One further example must be quoted. In a settlement of disputes between Troezen and Hermione, which receives the force of an arbitral award, it is stipulated that no claims shall be brought forward in future based upon disputes which are settled by this treaty: in the event of any such claim being brought before a court of law, the verdict shall be null and void and the claimant shall be subjected to a fine of a thousand drachmas if an individual, of ten thousand if a state.[3]

Refusal to accept an award when given seems to have been of rare occurrence in ancient, as it has been in modern, times. Herodotus relates that the Thebans, after agreeing to submit their quarrel with

[1] XLVIII, ll. 17–22; LV, ll. 22–25. [2] XLV B, l. 18 f.
[3] XIV B, ll. 5 ff.

the Athenians and Plataeans to Corinthian arbitration, refused to accept the decision and made a treacherous attack upon the retiring Athenian forces,[1] an act of perfidy due, if the record is trustworthy, solely to chagrin at the unfavourable character of the award. But we may conjecture that, if Herodotus had inquired into this episode at Thebes, he would have found a different tradition current there. The only other instance known to us is that of the Corinthians, who lodged an objection to the determination of the frontier between their territory and that of Epidaurus as carried out by Megarian arbitrators: the ground of the objection is not stated, but it appears to have had some justification, for a second commission, considerably smaller than the first and chosen from amongst its members, was instructed to visit the scene and make a careful demarcation of the boundary-line.[2]

Rather more numerous are the instances in which judgement went by default, owing to the failure of one of the two states involved to appear at the inquiry or to maintain its case. Not long after the outbreak of the Peloponnesian War the Eleans and the Lepreates submitted a dispute to Spartan arbitration, but the Eleans,

> 'suspecting that justice would not be done to their claims, broke off the arbitration (*ἀνέντες τὴν ἐπιτροπήν*) and ravaged the Lepreate territory.'[3]

[1] Hdt. vi. 108.

[2] xv, ll. 7 ff. The circumstances of 11 are different for the Lacedaemonians there appear as refusing to pay a fine inflicted upon them not by any court of arbitration but by the Achaean League.

[3] Thuc. v. 31. 3.

It would almost seem, to judge from the language here used by Thucydides, that the Eleans claimed the right of revoking their agreement to abide by the arbitrators' verdict at any time before that verdict was pronounced. The Spartans, however, took a different view, proceeded with the case, declared the Lepreates independent, and, on the ground of the Elean withdrawal, sent a force to Lepreum to protect it against further aggression. The Eleans retorted by leaving the Spartan hegemony and making an alliance with the Argives.[1] At the beginning of the following century we hear of another case going by default: the evidence of the witnesses had been heard and the boundaries of the disputed territory pointed out to the arbitrators, who were on the point of giving their verdict when the representatives of Myus abandoned their claims. This step apparently rendered an award superfluous, and the satrap Struses, under whose auspices the trial had taken place, on hearing what had happened, ratified the Milesian claim to the possession of the land in question.[2] A third example is afforded by the trial of Aratus for his attack on Argos, in which the Achaean general was fined in absence a sum of thirty minas.[3] Again, the Delphians record how, in 180 B.C., after a Rhodian tribunal had come to arbitrate in the dispute between them and the Amphissans,

[1] Ibid., §§ 4, 5. [2] LXX.

[3] Plut. *Arat.* 25. M. Laurent supposes that the two judgements contained in XXXVIII went by default, since the arbitrators are in neither case conducted to the frontier in question by the representatives of both the parties involved in the dispute.

> 'the award was not yet fully carried out, because the Amphissans wished to prevent the demarcation of the frontier,'[1]

but the passage is hardly precise enough to enable us to determine whether the Amphissans, like the Eleans in the case already referred to, refused to appear at the trial at all, or whether they declined to allow the award, when promulgated, to be put into execution. That sentence should be given in favour of the state represented, if only the deputies of one state appeared at the time appointed for the trial, is explicitly laid down in the arbitration treaty between Sardis and Ephesus, one of the clauses in which runs as follows:

> 'but if any one fail to appear, either before the mediating people or before the allotted state, judgement shall be given for him who does appear.'[2]

[1] XXII, l. 12 f. The references to the Milesians as δὶς πεφυγοδικηκότες (LXIX, l. 23) and as δίκην κενὴν θέλοντες ἀποφέρεσθαι (LXVIII, l. 150) are quite obscure.

[2] LX, l. 83 f. Cf. p. 78.

VII

THE DEVELOPMENT AND INFLUENCE OF ARBITRATION IN THE GREEK WORLD

In the preceding chapters we have attempted, with the aid of the Greek historians and especially of the extant inscriptions, to gain some idea of the form and processes of arbitration in the states of ancient Greece, regarding it rather from the constitutional than from the historical standpoint. The task now before us is to trace in outline, so far as the meagreness of our sources will allow, the development of the institution, and to estimate its importance as a factor in the interstate relations of the Greek world.

It has recently been maintained that 'the honour of first formulating the principle of interstate arbitration and of first putting it into practice lies with the Greeks'.[1] But such a statement is irreconcilable with established facts of history. Centuries, and even millennia, before the dawn of Greek history states had arisen and flourished in Egypt and Western Asia, which have left behind, engraved or imprinted upon stone or clay, priceless records of their domestic history and their mutual relations. The Tell-el-Amarna tablets,[2] the Hittite archives from Boghaz

[1] W. L. Westermann, *Classical Journal*, ii (1906–7), 198.

[2] H. Winckler, *Die Thontafeln von Tell-el-Amarna*, in *Keilinschriftliche Bibliothek*, v; A. H. Sayce, *Records of the Past*, N.S. iii.

Keui,[1] and all the rich store of documents discovered in the valleys of the Euphrates and the Tigris and in that of the Nile, have within recent years brought into the light of history whole nations which before were little more than names, whole ages which were shrouded in all but impenetrable darkness, and to-day we can trace the conquests of Subbi-luliuma the Hittite[2] almost as fully as the eastern campaigns of Trajan. But the most arresting feature of this new accession to our historical literature is not the tale of invasion and conquest which it unfolds, but the record thus preserved of an advanced civilization, of legislation such as that embodied in the Code of Hammurabi, of treaties as elaborate as that concluded about 1271 B.C. between Rameses II of Egypt and Hattusil II (Khetasar) of Boghaz Keui,[3] and of a surprising development of diplomatic negotiation between state and state. Under such circumstances we should expect arbitration to play some part in the settlement of international differences, and that it actually did so has been rendered probable by recent discoveries. A single example must suffice. About 4000 B.C. a bitter feud raged between the Sumerian cities of Shirpurla and Gishkhu, situated near to each other on the Shatt-el-Hai canal, and, warlike operations having failed to lead to a decisive

[1] H. Winckler, *Mitteilungen der deutschen Orient-Gesellschaft*, Dec. 1907, No. 35, pp. 1–71.

[2] J. Garstang, *The Land of the Hittites* (London, 1910), pp. 326 ff.

[3] W. M. Flinders Petrie, *History of Egypt*, iii. 63 ff.; J. Garstang, op. cit. 347 ff.; J. L. Myres, *The Dawn of History*, 156. The text is translated into English in *Records of the Past*, iv. 25 ff.; into German, R. von Scala, *Staatsverträge des Altertums*, i, No. 13, pp. 6 ff.

issue, recourse was had to arbitration, and the king of Kish was called in to define the frontier between the two states. 'A record of the treaty of delimitation that was drawn up on this occasion has been preserved upon the recently discovered cone of Entemena. This document tells us that at the command of the god Enlil, described as "the king of the countries", Ningirsu, the chief god of Shirpurla, and the god of Gishkhu decided to draw up a line of division between their respective territories, and that Mesilim, king of Kish, acting under the direction of his own god Kadi, marked out the frontier and set up a stele between the two territories to commemorate the fixing of the boundary.'[1]

The gaps in our knowledge of oriental history are too great to allow us to determine to what extent the principle of arbitral settlement was put into practice amongst the eastern states. Probably the tradition never entirely died out, though the actual application became rarer with the growth of the immense empires based upon conquest and destroying that equality between independent powers which is one of the main incentives to peaceful settlement because it so greatly enhances the uncertainty of war.[2]

[1] L. W. King and H. R. Hall, *Egypt and Western Asia*, 171: cf. G. Maspéro, *Histoire ancienne*, 8th edition, p. 188. The above account, taken from King and Hall, should perhaps be modified in the light of the remarks of Dr. T. G. Pinches appended to my paper read before the Victoria Institute (*Journal of Transactions of the Vict. Inst.*, vol. xliv. 296).

[2] J. B. Moore, *History and Digest of International Arbitrations to which the United States has been a Party*, vol. v (Historical Notes), cites two passages, taken from Merignhac's *Traité de*

Yet at a late period of the struggle between the eastern empires, when Lydia, rising under Alyattes to the zenith of its greatness, met the expanding Median empire under Cyaxares in a long and evenly contested struggle in the early part of the sixth century B. C., a treaty of peace and friendship was concluded between the rival powers, and Alyattes' daughter was given in marriage to the son of Cyaxares.

> 'Now those who reconciled them were these, Syennesis the Cilician and Labynetus the Babylonian,'

writes Herodotus,[1] and though it may be that these two kings intervened merely as mediators, yet it is more than possible that we have here a genuine instance of arbitration.

The Greeks, then, were not the first to appeal to this solution of difficulties between state and state. Whether they consciously and deliberately adopted an institution which they saw in use amongst their eastern neighbours, or whether they independently discovered this means of avoiding an appeal to arms, we cannot say, nor does it much matter. The Greeks themselves were singularly free from that form of vanity which claims to have been originative in many departments of life, and were content to acknowledge that they had derived from 'barbarian'

l'arbitrage international, to show that eastern nations sometimes practised arbitration; but of these two Hdt. vii. 2, 3 is not really a case of international arbitration at all, while Hdt. vi. 42 may refer to a Greek rather than a Persian custom. See W. L. Westermann, op. cit. 197 f.

[1] i. 74; R. von Scala, *Staatsverträge*, No. 26, p. 20. Cf. Hdt. i. 22.

sources many gifts which they had been able to appropriate and make their own by the use to which they put them. It is in the application of the institution of arbitration, its fuller and wider recognition, and its introduction into the western world as part of the machinery of international relations that we must see the greatness of the service rendered by the Greeks to the cause of the world's peace.

It is unfortunate that our epigraphical sources hardly go back beyond the fourth century,[1] for, as we have seen, it is from them alone that we learn the processes and the details of arbitration. Even for the fourth century the inscriptions are disappointingly few—the record of the frontier dispute between Miletus and Myus in which the former gained a verdict by default about 390 B. C.,[2] the list of assessments of damage done at Olympia by the Arcadians in 365–363 B. C.,[3] and the Argive award between Melos and Cimolus shortly after 338.[4] Yet, meagre as they are, these fragments of evidence bear out, what we should have expected to find, that the difference between these early records and those of the following centuries is due not so much to any change in the institution itself as to the desire for fullness and elaborateness of statement which characterizes the public records of the Greek states under the rule of the Diadochi. And this same fact would doubtless have been still more apparent and

[1] LI belongs to the middle of the fifth century, but it is doubtful whether this refers to a real arbitration, and in any case it throws no light upon the methods of arbitral courts in that century.

[2] LXX. [3] XI. [4] XLVII.

more striking if we possessed inscriptions of the fifth or sixth century relating to arbitration. Just as the concise and direct language of the early decrees gradually gives place to the greater prolixity and pretentiousness which mark those of the Hellenistic period,[1] just as the extreme brevity of the manumission-records of the late fifth or early fourth century discovered at Taenarum develops into the detail and elaboration of the corresponding Delphian records of the second or first century before our era,[2] just as the childlike simplicity of the archaic treaties passes into the lengthy and laboured phrases of many of the later documents of the same class,[3] so there can be no doubt that the earliest arbitration-records were characterized by this same terseness and avoidance of any superfluous phrase, and that the development here corresponded with that which is more easily traceable in other departments.

That the Greeks were accustomed to arbitration from an early period of their history is hardly open to doubt. Even if Pausanias's story that the Messenians offered to submit to arbitration their dispute with Sparta, which led to the outbreak of the First Messenian War, be rejected as the fabrication of a later age, reflecting back into the past the procedure familiar to itself,[4] we can scarcely call in question the substantial truth of the traditions

[1] Compare, e. g., the 'Salaminian Decree' (H. H. 4; *I. G.* i, Suppl. 1 a) with *I. G.* ii. 467.

[2] Compare *S. G. D. I.* 4588–4592 with any of the Delphian manumissions, *S. G. D. I.* 1684–2342.

[3] Compare, e. g., *S. G. D. I.* 1149 or 1150 with *S. G. D. I.* 5075

[4] Paus. iv. 5. 2, 7.

which tell of the arbitrations between Andros and Chalcis[1] and between Athens and Mytilene,[2] both of which episodes belong to the seventh century, while the arbitral settlement, early in the sixth century, of the struggle waged between Athens and Megara for the possession of Salamis is assuredly historical,[3] however much later imagination may have busied itself with embellishing the tale of Solon's advocacy of the Athenian cause. Of any essential modification in the methods of arbitration between the earliest times to which our records refer and the close of Hellenic independence we can discover no traces. Nor should we be justified in looking for such, since arbitral awards, though dealing normally with questions which are legal in their nature, are based not upon law, at least in the Greek world, which knew no codified International Law, but upon equity, and equity is far more stable than law.

By the middle of the fifth century—how much earlier than that we have no means of determining—the Greeks had taken a decided step in advance. Instead of awaiting a deadlock and then consenting to refer it to arbitration, they bound themselves on some occasions by treaty to deal in this way with any dispute which should arise out of the failure, alleged or real, of either of the contracting parties to observe the terms of the treaty, or indeed with any difference which might threaten to disturb the peaceful relations between the states.[4] For a while the sanguine hopes of those who looked for great results

[1] Plut. *Quaest. Graec.* 30.

[2] Hdt. v. 95; Strabo, xiii. 38, p. 600; Diog. Laert. i. 74.

[3] Plut. *Solon*, 10, &c. See p. 54 note 4. [4] pp. 65 ff.

from this stipulation seemed doomed to disappointment. Time after time during the troubles which thickened on the eve of the Peloponnesian War, the Athenians appealed to the compromise-clause inserted in the Thirty Years' Peace, but in vain;[1] and before that peace had lasted half its span of years, Athens and Sparta were again at war. To assign the blame for this failure with any confidence is hardly possible without a more authoritative presentation than we possess of the Spartan standpoint. The Spartans may have felt that the questions at issue were too large and important to be left to the decision of an arbitral court, that they were questions 'involving matters of vital interest or the independence or honour'[2] of some of their allies at least, if not of their own state. But other factors also were operative. It was difficult, perhaps, in the political circumstances of the time to find an arbitrator acceptable to both sides: there was no Periander now to undertake the office, and those Hellenic states which were wholly unbiased were also wholly insignificant.[3] The action of the ephor Sthenelaidas, who presided at the fateful assembly of the Spartans, was also in part responsible: instead of consulting the citizens whether war or negotiation

[1] Thuc. vii. 18. 2. Similarly the Athenians later refused the repeated Spartan appeals to arbitration, based upon the terms of the Peace of Nicias (ibid. § 3).

[2] Cf. p. 53.

[3] See the scornful retort attributed (Plut. *Apophthegmata Lacon.* 215) to Agesipolis of Sparta, when the Athenians, about 390 B.C., proposed that the Megarians be chosen as arbitrators between the two states: *Αἰσχρόν, ἔφη, ὦ Ἀθηναῖοι, τοὺς ἀφηγησαμένους τῶν Ἑλλήνων ἧσσον εἰδέναι Μεγαρέων τὰ δίκαιον.*

should be employed for the settlement of the differences with Athens, he took a vote on the question whether or no they were of opinion that 'the peace had been violated and the Athenians were in the wrong'.[1] But perhaps the chief reason is to be sought in the confidence felt in the victory of the irresistible Peloponnesian hoplite: the result of arbitration was uncertain, but of the speedy success of a Peloponnesian army under Spartan leadership there could be, so they thought, no question.[2] Yet this failure of arbitration to avert a disastrous war did not, as some observers may have feared at the time, sound the death-knell of the institution. It emphasized the truth that arbitration does not act automatically, that it is an instrument the efficacy of which lies in its use. Even in Sparta there were doubtless many who echoed the words of Archidamus that, since the Athenians offered arbitration in accordance with the terms of the Peace, it was contrary to law to attack them,[3] words which were probably recalled time and again during the long years of futile war and harassing anxiety which followed. Even those who had voted for war felt, in their calmer moments, that they had put themselves in the wrong by refusing the Athenian invitation to settle the dispute by arbitration, and attributed to this cause in great part the disasters which overtook them at Sphacteria and elsewhere.[4] And so we find that arbitration-clauses are inserted

[1] Thuc. i. 87. 2.

[2] Thuc. v. 14. 3 *ᾤοντο ὀλίγων ἐτῶν καθαιρήσειν τὴν τῶν Ἀθηναίων δύναμιν.*

[3] Thuc. i. 85. 2.

[4] Thuc. vii. 18. 2.

in the Year's Truce of 423, in the Peace of Nicias (421 B. C.), and in the alliance of 418 between Sparta and Argos.[1]

During the first sixty years of the fourth century there is not, so far as we can judge, any very marked development in the application of arbitration to bring about a solution of international difficulties. This may be due in part to a reaction in public feeling consequent upon the apparent uselessness of the efforts we have just described to substitute arbitration for war, but this explanation must not be pressed too far. For several examples of arbitration are known to us from this period, some six or seven in all, and doubtless there were many other cases, of which no record has survived. If we may hazard a conjecture, this period was one in which the employment of arbitration was gradually spreading over the entire Greek world, and even the smaller states were becoming more familiarized with this mode of putting an end to disputes with their neighbours.[2] And from the Greek states the practice was perhaps extending to their barbarian neighbours: as early as 423 Arrhabaeus, prince of the Lyncestians, had proposed that Brasidas should act as arbitrator between him and Perdiccas of Macedon,[3] and before the close of the fourth century the Tarentines demanded that the Romans and Samnites should desist from their warlike preparations and submit to them the settlement of their differences.[4]

[1] p. 67.

[2] Narthacium and Melitea, e. g., appeal to arbitration about 385 B. C., according to the commonly accepted view: see p. 90 f.

[3] Thuc. iv. 83. 3, 5.

[4] Livy ix. 14 (318 B. C.).

It is true that on this occasion the Romans paid no attention to a *vanissima gens, quae, suarum impotens rerum prae domesticis seditionibus discordiisque, aliis modum pacis ac belli facere aequum censeret*: yet it was from their Greek neighbours in all probability that the Romans learned their earliest lessons in that method of which in later years they were to make such frequent use.

The rise of the Macedonian power and the supremacy won by Philip and Alexander over a considerable part of the Greek world ushered in a new era in the history of international arbitration. There were frequent appeals to these two great conquerors, and to the kings who inherited the empire built up by them, to determine the political relations or the frontiers between state and state, and those appeals met with a ready response. For years before the battle of Chaeronea, Philip had urged upon the Athenians the advisability of an arbitral settlement of the questions at issue between them,[1] but they had refused to adopt this course, persuaded by the arguments of Hegesippus and Demosthenes, who impugned Philip's bona fides, referred tauntingly to his birth in Macedonian Pella, insisted upon the difficulty of finding an unprejudiced arbitrator, and maintained that, even should the verdict not be determined by Philip's gold, it would leave the Athenians in no better a position than before.[2] Without deciding the merits of this controversy, we may say that Philip, after the victory which left him master of Hellas, regulated its internal

[1] *Philippi epistula*, [Dem.] xii. 11, 15, 17.

[2] Hegesippus, [Dem.] vii. 7, 36; Aeschines iii. 83.

condition by a salutary use of arbitral methods, though assigning to a mixed Greek tribunal rather than claiming for himself the task of inquiry and award.[1] By this expedient he sacrificed no substantial power, while avoiding an appearance of autocracy which would have been opposed to his policy in dealing with his Greek subjects.

During the third century arbitration plays a very prominent part in Greek history, and it is interesting to note that at least twenty-one of the epigraphical records cited in Chapter I fall within it, as compared with the three which belong to the preceding century. In Alexander and his successors the Greeks found men most of whom possessed some powers of statesmanship, a sincere desire to settle the internal feuds which threatened the peace and stability of their empires, an unbiased judgement, a willingness to take pains in the investigation of the disputes brought before them, and the power requisite to secure effectiveness for their awards. The proof of the utility of arbitration thus given to the Greek world led to its adoption by the Leagues and Confederacies which play so large a part in the history of Hellenistic Greece: the Achaean, Aetolian, Thessalian, and Boeotian Leagues employ it as their normal means of maintaining peace and concord amongst their members. In these cases the arbitrator was not usually a reigning monarch, but either a mixed commission or, more commonly, some Greek state, chosen either by the common consent of the contending communities themselves or by the Council of the Confederacy to which they belonged.

[1] Polyb. ix. 33.

This extensive and constant reference to arbitration suffers no diminution when the Romans enter the Greek world and become the dominant political factor in it. Between forty and fifty of the inscriptions which form the basis of our inquiry belong to the second century B.C., when arbitration in the Greek world may be said to have reached its high-water mark, which has probably been surpassed, if at all, only in the nineteenth century of our era.[1] For in addition to these inscriptions there are frequent references in the historians to similar instances, while those which have left no mark upon history must have been at least equally numerous. It is unnecessary to enter into a discussion of the part played by the Roman Senate and Emperors in the application of arbitral methods of decision, for the subject lies to a great extent outside the scope of this essay, and has, moreover, received full and careful treatment at the hands of E. de Ruggiero.[2] Yet a few words may be said to indicate the general characteristics of senatorial activity as arbitrating in the disputes of the Greek world, especially in the period between the battle of Cynoscephalae and the close of Greek independence.

It is difficult, if not impossible, to determine accurately how far appeals to senatorial decision are true cases of arbitration, for on some occasions

[1] According to J. B. Moore, the nineteenth century witnessed 136 completed cases of true international arbitration (*The Nineteenth Century*, p. 24).

[2] *L' Arbitrato pubblico presso i Romani*, Rome, 1893. Cf. G. Colin, *Rome et la Grèce*, 507 ff.

at least the appeal seems to have come from only one of the two states involved and thus to have lacked that essential feature of all genuine arbitration, the common consent of the two parties engaged in the dispute. Again, the Senate sometimes undertook the task of decision definitely in virtue of the power won by conquest and acknowledged by treaty, and in such cases, although the form of the decision and the formulae of the award might be practically unaffected, yet one of the main characteristics of arbitration, the voluntary submission to the verdict of a neutral tribunal, is absent. Yet these facts do not do away with the possibility and the reality of senatorial arbitration. Only those who ignore the fact that within recent years the King of Italy, the Czar of Russia, the Emperor of Germany, and the King of England have severally been appointed arbitrators in international disputes will feel that there is anything incongruous in the Senate occupying the same position. That body possessed some at least of the attributes of the ideal arbitrator—neutrality, prestige, and power,—and some of the appeals made to it were prompted by the same motives which had led the Greek states of the previous period to seek the decisions of the Macedonian or Seleucid or Lagid kings.

With such appeals the Senate dealt in one of three ways. Occasionally the inquiry was held before the whole body, envoys of the two states being allowed to set their respective claims before the Fathers, and the award was given in the form of a *SC.* In such cases the Senate as a rule adopted a conservative attitude, and contented itself with

ratifying some previous decision,[1] adding some such statement of its principle as

> τοῦτό τε μὴ εὐχερὲς εἶναι, ὅσα κατὰ νόμους κεκριμένα ἐστὶν ἄκ[υ]ρα ποιεῖν,[2]

or

> ἡμῖν οὐκ εὐχ[ερ]ές ἐστιν μεταθεῖναι ὃ ὁ δῆμος ὁ Ῥοδίων ἑκατέρων θελόντων κέκρι[κε κ]αὶ ὁρ[ισμὸν] πεπόνηται.[3]

More frequently the task is delegated to a senatorial commission, consisting of a single legatus or, more frequently, a number of legati, whose awards are practically binding although in theory they require senatorial ratification. But there were occasions on which the Senate took a different course. Recognizing that it was too far from the scene to be able to pronounce an adequate judgement on the facts, and unable also to devote to the inquiry the time which it would demand, the Senate contented itself with stating the rule which was to be applied and then handed over the investigation of the facts to some neutral Greek state, which was directed to find a verdict in accordance with the rule laid down in a *SC.* Just as, in 190 B.C., the Delphian hieromnemones, under the auspices of the Senate and the consul M'. Acilius, determined the boundaries of the domain belonging to Pythian Apollo,[4] so the Senate subsequently deputed to Mylasa the award between Magnesia and Priene,[5] to Magnesia that between Itanus and Hierapytna,[6] and to Miletus that between Sparta and Messene.[7]

[1] II, ll. 43 ff.; XXXIV, ll. 63 ff.; LXIV, ll. 10 ff. [2] XXXIV, l. 66 f. [3] LXIV, l. 10 f. [4] XXVI. [5] LXVI. [6] LVI. [7] I. Cf. LXIX.

Arbitration, then, was employed in all parts of the Greek world, from Sicily to Asia Minor, from Crete to the shores of the Euxine; it was practised from the early days of Greek history down to the time when Greece became part of the Roman Empire and even later, partly by the free initiative of independent states, partly under the pressure of Macedonian or Roman influence or coercion, partly in accordance with the constitutions of the Greek Leagues. What impression is left upon our minds by this experiment, carried on over so wide an area and during so long a period?

Bérard sums up his view in a single sentence:

Re vera, ad lites finiendas pacemque inter Graecos stabilitandam arbitria nihil valuere.[1]

Clearly such a statement constitutes either a condemnation, none the less absolute because it is only implicit, of the whole experiment or a grave indictment of the Greek race. It is in the latter sense that Bérard would have us interpret the words. 'Whenever', he tells us, 'they submitted a question to arbitration, their object was not to put an equitable conclusion to the dispute and renew peace and friendship with each other: but either they were worn out by war, and hoped for a brief respite in which to recover from their exhaustion, get together allies or mercenaries, and so with army reinforced to renew the war, or else, when some fresh power sprang up among the Greeks, they appealed to this not as an arbitrator but as an avenger. The unsuccessful party did, indeed, almost invariably accept the verdict in word, but never in spirit.'[2]

[1] Bérard, *Arb.* p. 103: cf. 105 f.

[2] Op. cit. p. 105.

A charge so serious must not be allowed to go unanswered.[1]

The sole ground for such a view lies in the fact that in certain well-known cases an arbitral award was not accepted by both sides as final and irrevocable, and consequently the same disputes were revived time after time and were always afresh submitted to arbitration: for we are not here dealing with those occasions upon which an appeal to this mode of settlement was made by one state and rejected by its rival, but only with those in which the arbitration actually took place. Now the existence of such age-long feuds is undeniable. The possession of the ager Dentheliates, for example, assigned to the Messenians by Philip II of Macedon in 338 and again by Antigonus Gonatas about 280, by Mummius in 146[2] and by a Milesian tribunal shortly afterwards, was restored by Julius Caesar and Marcus Antonius to the Spartans, but taken from them again by Atidius Geminus and, in A.D. 25, by the Senate, and apparently the question was reopened in some form under Vespasian in A.D. 78.[3] Melitea and Narthacium, again, referred their dispute about a piece of land to Medeus, then to a Thessalian community, and afterwards to a board of Macedonian arbitrators; the verdict of these three courts was reversed by T. Quinctius Flamininus, whose award was afterwards confirmed

[1] Its truth has already been called in question by W. L. Westermann, *Classical Journal* ii. 207 ff.

[2] Dittenberger (*Syll.*[2] 314 note 1) denies that L. Mummius acted as arbitrator.

[3] See W. Kolbe, *Sitzb. Berl.*, 1905, 61 ff. For an outline of the feud see Ditt. *Syll.*[3] loc. cit.; W. Kolbe, *Ath. Mitt.* xxix. 375 ff.

by a mixed Greek tribunal and finally by the Senate itself. And there were other feuds of equal duration, such as those between Sparta and Megalopolis[1] and between Samos and Priene,[2] in which arbitration was repeatedly employed.

Nevertheless, it must be acknowledged that these cases are quite exceptional: if we examine the list of arbitrations prefixed to Bérard's own treatise, we shall find that in thirty-three instances a single award sufficed, so far as our knowledge goes, to terminate a dispute, while in only eight was a further arbitration, or series of arbitrations, needful. To treat these last as normal is unscientific and misleading. And even here we must be on our guard against misconception: sometimes the same two states appear repeatedly in arbitral suits, but the dispute between them is not necessarily the same throughout. For instance, the long struggle between Samos and Priene is commonly regarded as having had one object throughout, the possession of the whole or part of the Βαιωνητὶς χώρα. But a careful examination of the documentary evidence will show that this is not the case; the territory in question was assigned to Samos by the award of Lysimachus, and the Prienians 'never afterwards either possessed or claimed it'.[3] The subsequent differences between the same states related to quite another question,

[1] Ditt. *Syll.*[3] 304 note 1.

[2] Ditt. *Syll.*[3] 315 notes 4, 6; Ditt. *O. G. I.* 13 note 1; J. P. Mahaffy, *Greek Life and Thought*, 631 ff.; U. von Wilamowitz, *Stzb. Berl.* 1906, 38 ff.

[3] U. von Wilamowitz, op. cit. p. 39. I had reached the same conclusion independently, before reading that article. For the opposite view see Ditt. *O. G. I.* 13 notes 6, 20.

and must not be thought of as a recrudescence of the old dispute.

A further fact of capital importance should not be overlooked. Turning again to the evidence in those cases which are regarded by Bérard as crucial, we find that the revival of the dispute always takes the form of a renewed demand for arbitration, never of an appeal to force of arms. And, to the credit of the Greeks be it said, that demand seems seldom to have been refused; although the questions involved were often intricate and difficult, although the verdict was uncertain and different courts sometimes gave opposite verdicts in the same question, yet the more powerful state or that which was actually in possession of the object in dispute had sufficient confidence in its equitable claims to be willing to waive its *de facto* advantage and to stake everything upon the result of the fresh arbitration demanded by its rival. For one thing at least is plain: the Greek states did not employ arbitration with the intention of gaining their object, if possible, by peaceful means, but of securing it by force should the verdict be adverse. The ever-increasing appeal to arbitration —nay, its very survival—may be regarded as sufficient proof of this, and in practically every case known to us from ancient history (and the same holds true in the modern revival of arbitration) the award has been accepted by both parties. Nor must we fail to keep clearly before our minds the alternative to arbitration; it was not negotiation, for the very appeal to an arbiter presupposes the failure of negotiation, but war, with all its attendant evils and with no guarantee of finality in its result. Samos

and Priene had tried that method of settling their differences for generations before they turned to arbitration: it had caused the slaughter of a thousand Samians in a single battle and soon afterwards the death of Priene's best and foremost citizens 'at the Oak',[1] yet their animosity was not reconciled and their dispute was no nearer a definitive issue. Even if we grant, therefore, Bérard's assumption, unwarranted though it appears to be, that the dispute between these two states affords the best illustration of the way in which cities demanded or accepted arbitration,[2] we shall not direct our attention exclusively to the frequency of the appeal to arbitral intervention, but shall notice also that, from the time when that method of settlement is first employed, war between these two states is unknown.

Arbitration may be regarded as a medicine intended to heal a disease of the body politic. Its efficacy depends upon its application, not upon its bare existence; and although there were occasions in Greek history when its use was rejected, yet records have come down to us of a large number of instances in which it was tried. What, then, was the result? In the great majority of cases, so far as we can judge, an immediate and lasting cure; in a small minority, a temporary alleviation only. The disease, maybe, was here incurable: incurable it certainly seemed so far as the expedients known to the statesmen of that age were concerned, and it was no slight benefit that arbitration could at least keep it in check by being administered from time to time as occasion required.

[1] Plut. *Quaest. Graec.* 20.

[2] Op. cit. p. 53.

That the remedy was infallible no one, certainly, would be bold enough to claim, for its virtue did not lie wholly within itself but success depended upon the existence and co-operation of a moral factor in those who had recourse to it. It is a commonplace of discussion that 'an international award cannot be enforced directly: in other words, it has no legal sanction behind it'. It rests upon the good faith of the parties who have invoked arbitral intervention, and the state which is disappointed in the verdict can always, in theory, refuse to put it into practice provided that it is stronger than its rival. This is, no doubt, true, but it is not the whole truth. Amongst civilized states (and it is with these alone that we have to deal, for they only are found to settle disputes by this method) physical force does indeed count for much, but it does not count for everything. Moral sense, religious feeling, a respect for public opinion both within and beyond its own borders—these are factors which help to determine national policy, and the very existence of diplomacy and treaties, which usually rest upon no other sanction than do international awards, is a mute protest against the cynical doctrine that all international relations are governed by the law

> That they should take who have the power,
> And they should keep who can.

And when we turn back to the ancient Greek world, whether we regard the place which religion occupied in the national life and the weight attached to treaty obligations, or try to realize how very few are the examples which history affords of arbitration broken off or an award rejected, we shall be forced to

acknowledge that arbitration did serve a valuable purpose, alike in averting war or armed reprisals between state and state, and in bringing to a speedier end conflicts which otherwise might have ended only with the destruction of one, or the exhaustion and ruin of both, of the belligerent powers.

TABLE OF CONCORDANCE

Tod.	Sonne, *Arb.*	Bérard, *Arb.*	Raeder, *Arb.*	References in this work.
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